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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION.

Master File No. 3:07-cv-5944 JST

MDL No. 1917

This Document Relates to:

**DECLARATION OF TRACY R.
KIRKHAM IN SUPPORT OF
OBJECTIONS TO REPORT AND
RECOMMENDATION OF SPECIAL
MASTER**

All Indirect-Purchaser Action

Hearing Date: March 15, 2016
Time: 2:00 p.m.
Courtroom: 9, 19th Floor
Judge: Honorable Jon S. Tigar

**DECLARATION OF TRACY R. KIRKHAM IN
SUPPORT OF OBJECTIONS TO REPORT AND
RECOMMENDATIONS OF SPECIAL MASTER**

Master File No. 3:07-cv5944 JST
MDL 1917

I, Tracy R. Kirkham, declare as follows:

1. I am a member in good standing of the State Bar of California, and licensed to practice in the states of California, Pennsylvania and New Jersey. I am a Principal in Cooper & Kirkham, P.C. I have personal knowledge of the facts stated in this Declaration and, if called as a witness, I could and would testify competently to them.

2. Attached hereto as Exhibit 1 is a true and correct copy of the transcript of a hearing that I attended before Special Master Quinn on January 5, 2016, at JAMS, Two Embarcadero Center, Suite 1500, San Francisco, California.

3. Attached hereto as Exhibit 2 is a true and correct copy of an email from Special Master Martin Quinn to Lead Counsel Mario Alioto with copies to others having the subject heading “Re: CRT/Hearing on January 5, 2016”, dated December 31, 2015, and lodged on the JAMS Case Anywhere system on January 4, 2016.

4. Attached hereto as Exhibit 3 is a true and correct copy of an email dated January 7, 2016 from Special Master Martin Quinn to Lauren Capurro, Esq. with copies to others having the subject heading “CRT: Production of billing records” lodged on the JAMS Case Anywhere system.

5. Attached hereto as Exhibit 4 is a true and correct copy of the “Declaration of Joseph M. Fisher Reporting On Claim Submissions” dated January 15, 2016, and lodged on the JAMS Case Anywhere system.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of February, 2016, in San Francisco, California.

/s/ Tracy R. Kirkham
Tracy R. Kirkham

EXHIBIT 1

Page 1

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
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5 IN RE: CATHODE RAY TUBE)
6 (CRT) ANTITRUST LITIGATION)
7) No. 3:07-cv-05944-SC
8) MDL No. 1917
9 This Document Relates to:)
10)
11 ALL ACTIONS)
12)
13
14

15 ORAL ARGUMENT HEARING
16 San Francisco, California
17 Tuesday, January 5, 2016
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23 Reported by:
24 SUZANNE F. BOSCHETTI
25 CSR No. 5111

Page 2

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

4

5 IN RE: CATHODE RAY TUBE)
6 (CRT) ANTITRUST LITIGATION)
7 This Document Relates to:)
8 ALL ACTIONS)
9

 No. 3:07-cv-05944-SC
 MDL No. 1917

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ORAL ARGUMENT HEARING held before Special
Master Martin Quinn, at JAMS, 2 Embarcadero
Center, Suite 1500, San Francisco, California,
beginning at 9:55 a.m. and ending at 1:17 p.m.,
on Tuesday, January 5, 2015, before SUZANNE F.
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12 MARLA COHEN, ESQ.: Research Attorney

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1 San Francisco, California; Tuesday, January 5, 2016

2 10:09 a.m.

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4

5 SPECIAL MASTER: Good morning. I'd like you to
6 identify yourselves for my benefit if not the court
7 reporter's. That would be good.

8 MR. ALIOTO: Good morning. Mario Alioto, lead
9 counsel for the indirect purchasers.

10 SPECIAL MASTER: Okay. And everyone has to
11 speak up, you know, without yelling at each other. But
12 we have to almost yell at each other because we not only
13 have to be sure Ms. Cohen and I hear, but the people on
14 the phone have to hear.

15 MS. CAPURRO: Good morning, Your Honor. Lauren
16 Capurro for the indirect purchaser plaintiffs.

17 MR. DUNCAN: Good morning, Your Honor. Matthew
18 Duncan from Fine, Kaplan and Black in Philadelphia for
19 the IPPs.

20 MR. GOLDBERG: Good morning, Mr. Quinn. My
21 name is Joe Goldberg from Freedman Boyd Hollander
22 Goldberg Urias & Ward in Albuquerque, New Mexico, for
23 the IPPs.

24 SPECIAL MASTER: I was just there.

25 MR. GOLDBERG: So was I.

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1 MS. KIRKHAM: Good morning. Tracy Kirkham of
2 Cooper & Kirkham on behalf of the objecting indirect
3 purchaser plaintiffs.

4 MR. COOPER: Josef Cooper, the second half of
5 the firm.

6 MR. SCARPULLA: Francis Scarpulla, Your Honor,
7 from the Law Offices of Francis Scarpulla in
8 San Francisco for the same objectors.

9 MR. BONSIGNORE: Robert Bonsignore on behalf of
10 the excluded plaintiffs. Excuse me for yelling.

11 MR. ADELSON: Eliot Adelson of Kirkland & Ellis
12 for Hitachi.

13 MR. SCARBOROUGH: Michael Scarborough of
14 Shepard Mullin for the Samsung SDI defendants.

15 MR. KOONS: Erik Koons, Baker Botts, on behalf
16 of Philips defendants.

17 MR. GEAGAN: Martin Geagan, Winston & Strawn,
18 on behalf of the Panasonic defendants.

19 MR. CORBITT: Good morning, Your Honor. Craig
20 Corbitt for the IPPs.

21 MR. CIHLAR: Nathan Cihlar from Straus & Boies
22 for the IPPs.

23 MR. NOVAK: Paul Novak of Milberg for the IPPs.

24 MR. ST. JOHN: Joseph St. John for objector
25 Douglas St. John.

Page 16

1 MS. MOORE: Theresa Moore for objectors
2 Rockhurst University, Garavanian and Talewsky.

3 MR. VARANINI: Emilio Varanini on behalf of the
4 California Attorney General's Office.

5 MR. SAVERI: Guido Saveri. I'm the lead
6 counsel for the direct purchasers. I do not intend to
7 participate. I'm here just as an observer, but I see a
8 lot of my friends here that I haven't seen for years.
9 Mr. Goldberg and the whole crowd, it's nice to see you.
10 Nice to see you again. You have your problems. The
11 direct purchase plaintiffs, as you know, are all
12 finished, and we're here to see what's going on.

13 SPECIAL MASTER: Thank you.

14 MR. SAVERI: Nice to see you. I'd like to see
15 several of you later and renew old acquaintances.

16 SPECIAL MASTER: We appreciate the support.

17 MS. KERN: Sylvie Kern for the indirect
18 purchaser plaintiffs.

19 MR. GRALEWSKI: Bob Gralewski, Kirby McInerney,
20 on behalf of the indirect purchaser plaintiffs.

21 MR. MICHELETTI: Chris Micheletti with Zelle on
22 behalf of the IPPs.

23 MR. PERELMAN: Don Perelman, Fine, Kaplan and
24 Black, for the IPPs.

25 MR. BOGDANOV: John Bogdanov with Cooper &

Page 17

1 Kirkham, objecting IPPs.

2 MR. CLAYTON: And Patrick Clayton from the Law
3 Offices of Francis O. Scarpulla for the objecting IPPs.

4 SPECIAL MASTER: All right. And on the phone,
5 if you could announce yourselves.

6 MR. BANDAS: Chris Bandas for objector Sean
7 Hull.

8 MS. OSBORN: This is Kathy Osborn for
9 defendants, the Thomson defendants.

10 MS. BRASS: This is Rachel Brass for the
11 Chunghwa Picture Tube defendants.

12 SPECIAL MASTER: Thank you.

13 MR. HOAG: You have Frank Hogue and Chris
14 Curran from White & Case on behalf of the Toshiba
15 defendants.

16 MR. TALADAY: John Taladay from Baker Botts on
17 behalf of the Philips defendants.

18 MR. KRESS: John Kress on behalf of John Finn
19 and Laura Fortman.

20 SPECIAL MASTER: Mr. Kress, who are you
21 representing?

22 MR. KRESS: John Finn and Laura Fortman.

23 SPECIAL MASTER: All right.

24 MR. BIRKHAEUSER: One more, Your Honor. Dan
25 Birkhauser of Bramson, Plutzik, Mahler & Birkhaeuser on

Page 18

1 behalf of the IPPs.

2 MS. ANDERSON: And Jennie Lee Anderson of
3 Andrus Anderson on behalf of IPPs.

4 MR. MILLER: And Steve Miller, co-counsel with
5 John Kress on behalf of Finn and Fortman.

6 SPECIAL MASTER: All right. Anyone else on the
7 phone who has not announced himself or herself?

8 All right. Here comes the email address from
9 the court reporter.

10 (Reporter complies.)

11 SPECIAL MASTER: Did everyone get that?

12 All right. So there is no perfect way to run a
13 hearing like this. I think what I'd like to do is go
14 issue by issue and take up, you know, the various issues
15 that are on my mind, and then at the end give you an
16 opportunity to raise any issues that we haven't covered.
17 And in no particular order, I've just jotted down five
18 issues that I'd like to cover.

19 First, the first is an issue that nobody raised
20 except me, which is it premature for the special
21 master to be issuing a report and recommendation on the
22 appropriateness of the settlement when there's a motion
23 pending to appoint co-lead counsel that would
24 potentially impact that -- that -- you know, the
25 fairness and reasonableness of the settlement.

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1 Second, the issue of the appropriateness of
2 releasing the class members in non-repealer states and
3 releasing the class members in the three repealer states
4 that were omitted from the litigation class.

5 Third, the issue of the adequacy of the notice.

6 Fourth, issues that have been raised by
7 objectors relating to the Chunghwa settlement.

8 And fifth, the issue raised by the Attorney
9 General of -- as to whether the claim deadline should be
10 extended and other issues that the Attorney General has
11 raised in her statement of interest.

12 So those are the top items on my hit list, and
13 then we can certainly discuss anything after that. For
14 those who haven't appeared before me, I mean, just
15 realize that Ms. Cohen and I have read all the briefs.
16 I get sort of restive when people repeat what's in their
17 briefs, particularly if they do so at great length. So
18 please, you know, try to keep your -- your comments
19 succinct.

20 There are a lot of people who probably want to
21 talk today, and I want to have the chance to give
22 everybody a full and fair hearing. On the other hand,
23 we have a lot to do to get this report and
24 recommendation in shape, and I don't want to spend an
25 unreasonable amount of time in an oral hearing. So

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1 that's just words of caution.

2 So I guess I'd like to ask Mr. Cooper and/or
3 Mr. Scarpulla, is it premature for me to submit a report
4 and recommendation on these issues on the 15th when you
5 are going to have a hearing, I believe on January 17, on
6 your motion to be appointed co-lead counsel to represent
7 the interests of class members in -- in non-repealer
8 states?

9 MR. COOPER: I guess we have debated that issue
10 back and forth, Your Honor, as to what to do before we
11 filed. We debated that question before we filed a
12 motion. And we know the schedule is the one that is
13 set, and we have not asked the court to change the
14 schedule or asked you to change the schedule. We do not
15 have any intention, if appointed co-lead counsel, of
16 doing anything other than proceeding with the objections
17 which have been advanced.

18 So we would be proceeding with those objections
19 with or without the designation. The defendants raised
20 the question in response to the motion to be appointed
21 as to whether we would be withdrawing from the
22 settlements. And we said, you know, finally we filed
23 that we can't withdraw from a contract that Mr. Alioto
24 entered into.

25 We can object, and we can be the court

Page 21

1 designated people to actually advance and advocate for
2 this group, this large group of people, the non-repealer
3 states that have not had anyone advocating for them
4 where their rights and the interests have been
5 abandoned. We think that the objections would be the
6 same. So I don't think it would make any difference
7 whether you delayed or didn't delay. You would be
8 facing the same questions and issues.

9 SPECIAL MASTER: Well, I mean, hypothetically
10 -- and I appreciate this isn't an issue for me, it's for
11 Judge Tigar, but hypothetically, if you were appointed
12 in some capacity, co-lead counsel or allocation counsel
13 or something, you know, would you want to do due
14 diligence? Would you want to do discovery? Would you
15 want to say to the court we object to the special
16 master's report and recommendation that just came out
17 two days ago and we essentially want a do-over?

18 MR. COOPER: Well, we have -- we have a
19 schedule for objecting if necessary or we decide to, you
20 know, report recommendations. The objections that we've
21 logged are the same. It's showing that as has been made
22 by Mr. Alioto with regard to the propriety and adequacy
23 of the settlement is presumably the same.

24 We've asked for discovery with regard to the
25 fee matters, and I realize we're not doing that. I

Page 22

1 believe some people have asked for discovery. But
2 there's been a showing, such as it is, with regard to
3 the adequacy of the settlement and why nothing is being
4 recovered in any way, shape or form for the non-repealer
5 state people. Those arguments are the same whether we
6 have the designation of co-lead counsel or not.

7 SPECIAL MASTER: Okay. So I take it your
8 answer is, to my question is no. It's not premature. I
9 should go ahead and issue the report and the
10 recommendation on the -- on the same schedule?

11 MR. COOPER: I guess that's the answer, yes.
12 Yes, it might be premature for other reasons. For
13 example, we've suggested with regard to the notice that
14 you ought to have an independent expert who can
15 actually, from an expert's perspective, evaluate the
16 notice issues that, to my knowledge, we've not acted on
17 that in any way. So that might be one reason why you
18 would -- it would be appropriate to do it.

19 But I guess what I'm trying to say is the
20 objections are the objections. If you feel that there's
21 a reason why designation as co-lead counsel -- and the
22 co-lead was to be Mr. Scarpulla and myself for this
23 group of people. It wasn't that we would be co-lead
24 with Mr. Alioto for the entire --

25 SPECIAL MASTER: I understand.

Page 23

1 MR. COOPER: Yeah.

2 SPECIAL MASTER: Mr. Scarpulla?

3 MR. SCARPULLA: Yes, Your Honor, just to follow
4 up on that. It probably makes a difference what Judge
5 Tigar does in terms of the responsibilities of any
6 co-leads if he decides to appoint them. So it might be
7 a good idea to ask him what -- what he wants.

8 MR. COOPER: I think it's clear from our answer
9 to your question, Your Honor, that there's some
10 ambivalence about that question which, as I said when we
11 started, we debated about as to whether that would or
12 would not be the appropriate way. And we came down on
13 the side of not asking the schedule be changed.

14 SPECIAL MASTER: Okay.

15 MR. COOPER: But we're acknowledging, I guess,
16 the legitimacy of your inquiry.

17 SPECIAL MASTER: Okay. Thank you.

18 Mr. Alioto?

19 MR. ALIOTO: Yes, thank you, Your Honor.
20 There's no ambivalence on our side. This matter is
21 squarely before Your Honor. There's a court order
22 scheduled in place. There's been no request for relief
23 to delay things. A lot of this matter is going to have
24 to be reviewed again by Judge Tigar de novo. The matter
25 is ripe. The matter is tee'd up. No ambivalence at all

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1 about it. We need to address the issues right now.

2 SPECIAL MASTER: All right. Thank you. At the
3 end of the table?

4 MR. BONSIGNORE: Can you hear me?

5 SPECIAL MASTER: Mr. Bonsignore, yes.

6 MR. BONSIGNORE: Okay. I didn't want to yell
7 again. My name is Robert Bonsignore, and I also put in
8 a request to be appointed co-lead. I would say that it
9 is premature because once the co-leads are appointed,
10 they have an interest to streamline the issues and also
11 to revisit what's been filed. Also a lot of things
12 weren't done. I personally think that it's premature,
13 especially given the authority that Judge Tigar is
14 likely, given the typical powers of appointment, the
15 powers that Judge Tigar is likely to give the co-leads
16 for these excluded plaintiffs.

17 So I take the opposite position of Mr. Cooper.
18 In framing the issue, you listed everything that I would
19 have put out there, and so I'm not going to bother
20 repeating myself -- yourself, rather.

21 SPECIAL MASTER: And just remind me. When did
22 you make this request to be appointed co-lead counsel?

23 MR. BONSIGNORE: Just -- I'll pull it up.

24 SPECIAL MASTER: So it was -- it was in --

25 MR. COOPER: It was in a reply brief.

Page 25

1 MS. KIRKHAM: It was on the schedule for the
2 opposition/response, that it was a joinder and request
3 -- a joinder in our motion and request to be added as
4 another lead counsel.

5 MR. BONSIGNORE: It was either December 24th or
6 25th because I remember the preparation was less
7 than popular in my office.

8 MR. COOPER: It was December 28th. It was
9 December 28th, the due date for the oppositions.

10 MS. MOORE: Your Honor?

11 SPECIAL MASTER: Ms. Moore.

12 MS. MOORE: First of all, I think the court has
13 changed the date of the hearing on the motion for
14 co-lead counsel to the 21st. So there's a little bit
15 more time. And I think that the court would be --

16 SPECIAL MASTER: There's more time for the
17 judge. There's not more time for me.

18 MS. MOORE: No more time for you.

19 It seems to me the judge would be interested in
20 hearing or seeing your report, and I think that that
21 would inform him on the motion.

22 SPECIAL MASTER: All right. Anyone else have
23 any thoughts on this before we get down --

24 MR. BONSIGNORE: I object to her logic. I
25 think it's self-serving and makes no sense to me.

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1 SPECIAL MASTER: Noted.

2 All right. All right. Let's move on then.

3 Thank you for that. Let's move on then to the issue of
4 the appropriateness of -- well, let me first ask a
5 preliminary question.

6 Mr. Alioto seemed to suggest in I think his
7 most recent filing that it might be possible to separate
8 the approval of the settlement amount with the
9 defendants, that is, the approval of the total amount of
10 the settlement as being fair, adequate and reasonable
11 and somehow separate or defer -- I wasn't quite sure
12 what was being suggested -- the issue of the fairness,
13 reasonableness and adequacy of the allocation plan.

14 Mr. Alioto, just before we get to the merits of
15 that issue, what did you have in mind there?

16 MR. ALIOTO: Well, what I had in mind was this,
17 Your Honor. The starting point for these settlements is
18 the settlement agreements themselves. That sets out all
19 of the essential terms of the settlements. That's what
20 we referred to as the settlement.

21 The plan of allocation is something that we,
22 the indirect purchaser lawyers, have put together. It's
23 something that in our best judgment will effectuate the
24 settlements. This is not all spelled out. This plan of
25 allocations, the releases, the notice provisions, the

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1 various -- the various terms attendant to the underlying
2 settlements, they're not set out anywhere. This is a
3 plan devised by indirect purchaser counsel in
4 consultation with experts and notice experts.

5 And what I meant to suggest there is that this
6 plan of allocation is reasonable. This plan is
7 sustainable. This plan ought to be implemented. \$576
8 million ought to be distributed to the claimants, but
9 our broader goal is to get something done. And to the
10 extent Your Honor feels that yes, it's reasonable, but
11 I'd like to adopt plan B, which is also reasonable, or
12 plan C, which is also reasonable -- I have no pride of
13 authorship here. I'm not dug in. My goal is to get
14 this settlement approved.

15 That's what the thought is there when we cited
16 that law to you that says there's the underlying
17 settlements and there's the plan. There may be
18 different ways to get this done to get everybody happy.
19 I don't -- I certainly am not advocating for these other
20 ways, but if those other ways meet due process and
21 they're fair and reasonable and we can accommodate
22 somebody's concerns, we're more than willing to do that
23 to get this done.

24 SPECIAL MASTER: So hypothetically, and I
25 really mean hypothetically, would it create any problems

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1 in your mind if -- if I were to say all right, the
2 settlement vis-à-vis the defendants is fair, adequate
3 and reasonable. \$576 million, given all the factors
4 that you're supposed to consider, is an appropriate
5 settlement, but the plan of allocation proposed is
6 faulty in these ways. That would have the result of not
7 sending you back to the negotiation table with the
8 defendants, but it would require you to do some in-house
9 tinkering perhaps with the allocation plan.

10 And I -- by suggesting it, I do not mean to
11 suggest I am headed in that direction. I just throw
12 that out -- I just want to know if -- would that create
13 any procedural or legal problems if I were to proceed
14 that way?

15 MR. ALIOTO: Yes. No, that would be welcome.
16 One part of that would not be welcome was -- would be if
17 you were to come to the conclusion that our proposal was
18 not reasonable and not adequate, that -- that would
19 cause some concern.

20 But to the extent you felt that there were
21 other reasonable ways to approach this or other ways to
22 get this settlement approved and accommodate the
23 interests of objectors and the attorney general, we
24 would be open to that, and we would welcome this kind of
25 piecemeal approach, the underlying settlement approved,

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1 then get on to the approval of the allocation. And I'm
2 not saying that has to be months apart. But --

3 SPECIAL MASTER: Well, the settlement
4 officially as proposed under this hypothetical would not
5 be approved. The terms of the settlement vis-à-vis the
6 defendants would be approved, but you would have to go
7 back and propose another plan of allocation to fix
8 whatever defects I found.

9 MR. ALIOTO: Yes. And again, I don't know that
10 you have to determine that they are defects. I think
11 you could -- you could identify matters that could be
12 addressed and solved in different ways. And I'm sure we
13 could put our heads together and come up with something
14 that's very close to what we proposed and that would
15 moot concerns.

16 SPECIAL MASTER: Okay.

17 MR. ALIOTO: I mean --

18 SPECIAL MASTER: So I don't -- anyone else have
19 any thoughts about this? What about the defendants? If
20 I were to proceed that way, would that cause any
21 heartburn for the defendants?

22 MR. SCARBOROUGH: Your Honor, Mike Scarborough
23 for the Samsung SDI defendants, and I'll attempt to
24 articulate a general defense consensus.

25 I think what Your Honor outlined would be

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1 constructive, and I think it would be welcome for our
2 side. Our primary interest is in getting the
3 agreements, the contracts that we entered into approved
4 in terms of the amount of money being paid collectively
5 and the releases that we bargained for being approved as
6 fair, adequate and reasonable.

7 And we do believe that the allocation issues
8 logically can come later, later down the line. And so
9 we would like to get at least past that first hurdle of
10 the underlying agreements vis-à-vis the defendants are
11 fair, adequate and reasonable and deserving of a final
12 approval.

13 And we do view many of the objections as really
14 going to allocation issues, and as a general matter we
15 don't have a problem with some tinkering being done to
16 the plan of allocation proposed by lead counsel.

17 SPECIAL MASTER: Okay. Mr. Scarpulla.

18 MR. SCARPULLA: Yes, Your Honor. On that --
19 first of all, I think I heard Mr. Scarborough say
20 something about the releases. That's a different issue
21 than the amount of money because the releases, of
22 course, release claims by half the country for zero
23 consideration.

24 SPECIAL MASTER: No, but -- I'm sorry to
25 interrupt. But I mean hypothetically, you could say the

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1 releases are appropriate, but there's got to be some
2 compensation paid to those people --

3 MR. SCARPULLA: Correct.

4 SPECIAL MASTER: -- which is not an issue, I
5 take it, that would bother the defendants. They don't
6 care how the money -- to whom the money is paid, they
7 just want their releases.

8 MR. SCARPULLA: Yes, Your Honor, that is
9 correct, and I was getting to that point, which would
10 mean that the amount of money is therefore not
11 sufficient because you'd be spreading it out -- if they
12 settle for half the country, not the whole country, then
13 you'd be spreading it out over the whole country. You'd
14 have to give new notice to everybody. I mean, there are
15 all those issues.

16 And remember, as Your Honor may recall in LCDs,
17 we settled that case, including for the states,
18 \$1.1 billion. The conspiracy here was of longer
19 duration. There were hundreds of meetings throughout
20 the world. Hundreds more than in LCDs. The affected
21 commerce was much larger, and the settlement was half
22 that amount and excluded three repealer states. So if
23 you include them in, you'll have to get more money from
24 somewhere, Your Honor, to --

25 SPECIAL MASTER: Okay. Got it.

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1 MR. COOPER: Can I supplement? Maybe I'm
2 saying the same thing in a different way. In order to
3 --

4 SPECIAL MASTER: Try not to.

5 MR. COOPER: In order to rule on the adequacy
6 of a settlement, you have to know what claims you're
7 settling. Here we know that the claims of over half the
8 country were valued at zero. And it seems very clear
9 from everything that's gone on, the amount of money that
10 was paid was paid for those claims which Mr. Alioto felt
11 had merit. Nothing was paid for those claims which had
12 no merit in Mr. Alioto's view.

13 So if you're now going to pay money to those
14 people, you've got to take it away under that procedure
15 from the claimants whose claims were being settled for a
16 fixed amount of money, which reduces it by \$1 or more,
17 reduces the amount available.

18 There's been however many notices that have
19 gone out that have told people if you're not in those 21
20 jurisdictions, you're not going to get paid. You'd have
21 to be renoticing, seeing what objections there would be.

22 Now it might be possible to say that amount of
23 money takes care of the claims in 22 jurisdictions and
24 get rid of the national class and leave those
25 non-repealer people on to their own devices, to have a

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1 different counsel represent them, attempt to get class
2 certification or whatever went on; to litigate the
3 issues of whether they have claims, or, as Mr. Alioto
4 says, they have no claim.

5 But to try to separate them here without
6 knowing how much money that's going to go to those
7 people, whether that now leaves an adequate amount for
8 the non-repealer states and for the repealer states --
9 you know, are they going to get one dollar, are they
10 going to get 50 percent of the money. You'd need to
11 know all of those issues to be able to evaluate the
12 adequacy of the settlement. So what claims are being
13 settled is the first question.

14 SPECIAL MASTER: Okay. I don't want to spend
15 any more time on this. Anyone have something new that
16 hasn't been said before?

17 Ms. Moore.

18 MS. MOORE: Your Honor, in order to approve the
19 settlement, there's certain foundational evidence that
20 needs to be in the record, and one of the things that
21 needs to be is that everything is valued, and not all
22 the claims are valued.

23 There was nothing in the record that any of
24 these other claims were valued, any of these states that
25 were left out or any of these non-repealer or repealer

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1 states that were left out. There was no evidence that
2 they were considered and valued. Not until later on in
3 the reply after it was attacked did they say oh, there
4 was no value.

5 So essentially they didn't consider them at
6 all, which makes the \$576 million completely
7 inappropriate. And so you can't approve the settlement
8 at that amount when all of these people being released
9 were never even looked at and valued.

10 SPECIAL MASTER: Okay.

11 MR. SCARPULLA: Excuse me. There's one other
12 thing I think that Judge Tigar raised in the directs
13 maybe about evidence of what each class member would get
14 if there had been a successful trial as opposed to how
15 much they get in this settlement. And I don't recall
16 seeing that in the record yet.

17 MS. MOORE: No, it has not come up in the
18 record, and we've asked multiple times. In LCD we knew
19 exactly what each panel -- the damages were for each
20 panel, for each claimant. So knowing the claims rate
21 and knowing the value of each is vitally important to
22 valuing the settlement. And you can't approve the
23 settlement without that information. And to this day,
24 it's still not in the record. But we know that when
25 Janet Netz made her expert report and valued the whole

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1 case at \$2.7 billion, there must have been an individual
2 damage analysis, which I know there was in LCD.

3 SPECIAL MASTER: Did you want to respond to
4 that?

5 MR. ALIOTO: Well, no. We have certain issues
6 that we came prepared to address, and one of the things
7 that has not been addressed by objectors is the amount
8 of the settlement and the comparability to LCD and did
9 we get enough money. I just want to note for the record
10 we -- we have enough issues to discuss here today.

11 That's something that has not been raised.

12 SPECIAL MASTER: But the point --

13 MS. MOORE: Well, it was raised.

14 SPECIAL MASTER: Wait, wait. The point that's
15 being made by Ms. Moore is you can't just -- the court
16 can't just say: Okay, 576 million, that's a lot of
17 money, that's okay.

18 You have to know or have some sense of the
19 range of the value of each individual class member's
20 claim. And they may be different values depending on
21 how they're situated and what they're going to get in
22 the settlement so that you can compare what a class
23 member would have gotten if they went to trial with what
24 they're getting in the settlement. And Ms. Moore says
25 there's nothing to that effect in the record.

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1 MR. ALIOTO: I'm pretty sure there is, Your
2 Honor. And I know this for a fact, that we did that
3 analysis. Our expert Janet Netz did that analysis.
4 What was the overcharge on tubes and monitors? It was a
5 higher overcharge. What was the overcharge on tubes in
6 small televisions? What was the overcharge on tubes in
7 large televisions? All of that analysis was done.

8 SPECIAL MASTER: And is in her report --

9 MR. ALIOTO: Yes.

10 SPECIAL MASTER: -- which is in the record.

11 MR. ALIOTO: Is in the record. And it may have
12 also been cited when we filed our motion for preliminary
13 approval -- I'm going back a little ways here, but in
14 the northern district there is a rule that as part of a
15 preliminary approval motion, you have to make a -- as
16 part of your prove-up you have to show the damages and
17 the range of damages, and I'm quite sure that that
18 showing was made in our original papers.

19 SPECIAL MASTER: All right.

20 MS. MOORE: Your Honor --

21 MR. ALIOTO: That's our response to that.

22 MS. MOORE: It wasn't -- it's the panel --

23 SPECIAL MASTER: You know, we've got to get on
24 with the meat of the objections here.

25 MS. MOORE: Actually --

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1 SPECIAL MASTER: I don't want to go on much
2 longer on this.

3 MS. MOORE: May I say one thing?

4 SPECIAL MASTER: Yes.

5 MS. MOORE: It is important to this meet the
6 settlement. You need the dollar amount per panel. So
7 we know that for a panel it was \$65 in damages in LCD.
8 We don't have that number in this case, so we can't
9 evaluate it.

10 MR. COOPER: I would just request that Mr.
11 Alioto -- we're not aware of where Ms. Netz's report,
12 damage study report for trial is in the record. So I'm
13 not certain what he's referring to.

14 SPECIAL MASTER: Was her -- wait, please.

15 Was her deposition taken?

16 MR. ALIOTO: Yes.

17 MR. COOPER: And filed -- they're not filed.
18 They're not in the clerk's office. They weren't filed.
19 They're not available to generally -- generally to
20 people. We never saw them. We're lawyers in the case,
21 and we weren't allowed to see them.

22 SPECIAL MASTER: Was her report not made an
23 exhibit to her deposition?

24 MR. ALIOTO: It was -- it was an exhibit to her
25 deposition.

1 MR. COOPER: The deposition was confidential.

2 MR. ALIOTO: But they're counsel of record.

3 They've signed the protective order.

4 SPECIAL MASTER: All right.

5 MS. CAPURRO: It's also in the record. It was
6 filed as part of our opposition to summary judgment.

7 MR. COOPER: Not an unredacted --

8 SPECIAL MASTER: Was there a -- was there a --

9 MS. CAPURRO: And it's also referenced in --

10 SPECIAL MASTER: Was there a Daubert motion?

11 MR. ALIOTO: Yes.

12 SPECIAL MASTER: There was a Daubert motion.

13 So guess who ruled on it? And so I certainly saw her
14 report.

15 MR. ALIOTO: And when those are filed, Your
16 Honor, they're not in the court record, they're under
17 seal in the court record, but they go by separate email
18 to all of the indirect purchaser counsel because they're
19 parties to the protective order. So these folks have
20 all that information.

21 SPECIAL MASTER: Okay.

22 MR. BONSIGNORE: I just -- make -- I did not
23 get it by email at all. The information that would be
24 helpful to me in relationship to a case that I had that
25 was -- that we actually succeeded in doing what you're

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1 proposing was the claims rate. We don't have any
2 information yet on the claims rate. We don't know if
3 there's a surplus or whether people will get a cut down.
4 The excluded states, according to the terms of the
5 settlement agreement, you'd have to very carefully craft
6 language that would not cause them to waive their rights
7 to proceed in economic recovery. And I'm just going to
8 cut it there.

9 Just with a grain of salt, I approached Mr.
10 Alioto at least a dozen times before today and asked him
11 to let's talk about it. And although he's wide open to
12 the suggestion today, which is very positive, very good,
13 maybe it was something that you said, but before today,
14 he had dug in and wasn't going to change anything. So
15 this is -- you've already made progress.

16 SPECIAL MASTER: All right. So the next issue
17 really I want to talk about is the merits of the -- are
18 the merits of the objections that have been raised to
19 the failure of the allocation plan with any monetary
20 compensation to the residents or the purchasers in the
21 non-repealer states and the three omitted repealer
22 states.

23 So I really don't need all those arguments
24 repeated, but if there's someone has something eloquent
25 to say -- Ms. Kirkham, I see you're raising your hand.

1 MS. KIRKHAM: I'll work on eloquent here and
2 brevity. Brevity perhaps more important than eloquence.

3 In the adequacy -- the adequacy of the
4 settlement with regard to the non-repealer state claims,
5 where we begin is with lead counsel's repeated
6 statements that they value the claims as zero. So I
7 think we can agree that that's been established as a
8 fact.

9 We know that, for example, the 500 plus million
10 dollar settlement is compared in their papers to Dr.
11 Netz's \$2.8 billion damage number. That number is for
12 the 21 damage class states. So those are the purchases
13 that occurred in those states. We don't know -- we
14 could compute it if we actually had a per panel and some
15 information about sales of what it is in the other
16 states, but I don't believe Dr. Netz ever did that.

17 So we have, so we're beginning with the idea
18 that what we have, what you have before you and the real
19 fundamental question you have before you really is are
20 those claims valueless. Are they meritless. And are
21 they so demonstratively meritless that without affording
22 the possessors of those claims, the due process under
23 Rules 12 or 56, you can say that they should be released
24 here. They should be dismissed with prejudice because
25 the effect of approving this settlement is exactly the

1 same effect as a ruling on summary judgment on those
2 claims or a ruling on Rule 12 on those claims.

3 So that's essentially what you're doing, but
4 not in -- not affording them the due process of those
5 procedures. So the claims have to be pretty
6 fundamentally meritless at the courthouse door for that
7 determination not to be made.

8 Now I'm not saying that determination is
9 impossible in a class action settlement, but generally
10 where you find judges and special masters being willing
11 to do that is where you have a situation in which you
12 have a factual disparity between two purported class
13 members so that you can look at one and you say you
14 bought the price fixed product. And in a period that we
15 have evidence that the price was artificially inflated
16 and therefore we say -- I can look at you and say -- for
17 settlement purposes certainly I can say you were
18 injured.

19 And you over here, Mr. Jones, you bought the
20 product, or if it's a securities case, you traded the
21 security during the period that the evidence suggests
22 that the price was in fact competitive. Maybe the
23 conspiracy was still going on, but it fell apart during
24 that period. There's some evidence in the case, some
25 way the person purchased, some evidence that those

1 purchasers did not damage the individual.

2 Now we come to the situation that we have
3 here -- and I really think that if you read the Sullivan
4 case, you can see that the third circuit was coming to
5 grips with this idea. Is what we have here is a
6 situation in which you have two class members for whom
7 you can say they bought the same product under the same
8 circumstances, inflated the same way. The only
9 difference is that they're standing on opposite sides of
10 a geographic boundary called a state line. And on the
11 one side of the state line it's we're home free, and on
12 the other side of the state line you say you, because of
13 that, despite your factual claim, you can't possibly
14 recover under the factual claim.

15 We don't have that situation here. Illinois
16 Brick doesn't do that. Illinois Brick is a rule of
17 evidence fundamentally. The Supreme Court was faced
18 with the choice it felt of overruling Hanover Shoe and
19 allowing defendants to put in evidence of passthrough or
20 enunciating a rule that said what's sauce for the goose
21 is sauce for the gander, and the plaintiffs can't put
22 that evidence into.

23 So if you are a plaintiff and you need evidence
24 of passthrough in order to establish your claim, you're
25 probably out of luck under Illinois Brick. You still

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1 actually have the right to come into court and attempt
2 to show why it doesn't apply to you. It is not a rule
3 of standing. It does not bar people at the courthouse
4 door, nor is it the indirect purchaser hostility act.

5 SPECIAL MASTER: But why wouldn't it apply --
6 you know, assuming it's sound law and the Supreme Court
7 doesn't change its mind, why wouldn't it apply to all
8 the class members in these states? What would be a
9 ground for someone saying I am --

10 MS. KIRKHAM: It would --

11 SPECIAL MASTER: -- I am entitled to make a
12 claim as an exception to Illinois Brick?

13 MS. KIRKHAM: We're not -- we're not suggesting
14 exceptions to Illinois Brick. We're not suggesting
15 claims and exceptions to Illinois Brick. We're just
16 suggesting claims that fall outside of Illinois Brick.

17 SPECIAL MASTER: All right. Such as?

18 MS. KIRKHAM: Okay. Such as the claims for
19 equitable monetary relief. They do not require proof of
20 pass on, and as soon as you have a claim that does not
21 require proof of pass on, Illinois Brick becomes a case
22 that sits over here and applies to other people.

23 What that is is a situation in which there is
24 the inherent power of the federal court to award in a
25 situation in which a person proves that the factual

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1 predicate of recovery, any recovery which appears in law
2 or in equity. The Clayton Act specifically talks about
3 affording a recovery that is reversing, undoing the
4 overcharges the defendants collected. There is
5 nothing -- the Ninth Circuit has never suggested -- in
6 fact, the Ninth Circuit has explicitly endorsed that
7 that is one of the policies of the antitrust laws.

8 The antitrust laws also -- there are tomes that
9 talk about the benefits that the antitrust laws convey
10 on society as a whole and the benefits of private
11 enforcement of those laws convey on society as a whole.

12 So there's not been probably a better situation
13 where someone is set up to make an equitable claim for
14 monetary relief than someone who is acting as a, quote,
15 private attorneys general and coming in and vindicating
16 a critical tenet of American not only jurisprudence, but
17 indeed of American economic theory and practice, and
18 that is competition.

19 SPECIAL MASTER: Can I just interrupt a minute?
20 Am I correct that the state of the law on recovery of
21 equitable monetary relief in non-repealer states is
22 number one, everyone agrees there is no federal right to
23 such damage?

24 MS. KIRKHAM: No, there is.

25 SPECIAL MASTER: You're saying there is under

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1 the --

2 MS. KIRKHAM: We're talking -- I'm talking
3 about someone who comes into federal court and alleges a
4 violation of the Sherman Act.

5 SPECIAL MASTER: Okay.

6 MS. KIRKHAM: Yes.

7 SPECIAL MASTER: And then there are also -- you
8 maintain there would be cognizable state law claims for
9 equitable monetary relief in these non-repealer states,
10 yes?

11 MS. KIRKHAM: Umm --

12 SPECIAL MASTER: No?

13 MS. KIRKHAM: Probably not in the non-repealer
14 states, only because a lot of their state courts have
15 said that -- well, let's put it this way: There
16 wouldn't be unjust enrichment. Whether there would be
17 the same kind of equitable monetary relief granted
18 simply for proof of the violation of the state law,
19 because the same argument about Illinois Brick that it's
20 a rule of evidence applies when it's applied in state
21 court to state law as well as when it's applied in
22 federal court to federal law.

23 But we're not talking -- there are a lot of
24 cases -- the cases that Mr. Alioto is citing about
25 unjust enrichment, we agree that they go the way they

1 go.

2 When Illinois Brick first came down, lawyers
3 for plaintiffs tried to avoid Illinois Brick by pleading
4 unjust enrichment claims under state common law and
5 unjust enrichment, and the state court said hmm-mm,
6 we're not going to let you do that. We're not going to
7 let you just recast an antitrust claim as an unjust
8 enrichment claim.

9 I'm not talking about going back and trying to
10 do that, to get that reversed, and I am focused and we
11 are focused on the federal recovery -- federal monetary
12 recovery that the court in KeySpan talked about and that
13 the court in LCDs, Judge Illston, talked about when she
14 first analyzed that there's a federal right to this.
15 And therefore, the state of Oregon, which was saying we
16 can do it under a state law, she then leapt over and
17 said your state law follows federal law. I think
18 there's a federal right. Then I think there's probably
19 a state right. And that was her decision on that
20 subject. That's why she talks about Oregon law.

21 But she's not -- her analysis doesn't begin
22 with Oregon law, it begins with KeySpan, it begins with
23 a federal right that arises under the antitrust laws
24 that if I prove a violation of the antitrust laws, I
25 might not be able to prove pass-on because Illinois

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1 Brick says I can't. But if I prove this violation, I
2 can ask the court to give me a monetary equitable remedy
3 that is disgorgement or restitution.

4 SPECIAL MASTER: Okay. I can see that this
5 argument and this line of thought would be a wonderful
6 law review article, but is there any authority out there
7 that says in the federal context that there -- despite
8 Illinois Brick, we are going to allow you to pursue a
9 federal claim for equitable monetary relief?

10 MS. KIRKHAM: There is the KeySpan case which
11 dealt with a governmental entity, and there is Judge
12 Illston's decision in LCDs. There is judge -- the
13 adoption by Chief Judge Hamilton of Judge Renfrew's
14 report and recommendation in DRAM. And then there are
15 the cases that we cited and the development of the law
16 this way that we cited in our brief from the antitrust
17 treatise that actually Mr. Varanini knows more about
18 than I do, since he was one of the editors or authors or
19 both.

20 SPECIAL MASTER: And that's it?

21 MS. KIRKHAM: And so far that's it.

22 SPECIAL MASTER: Okay.

23 MS. KIRKHAM: However, Your Honor, the decision
24 you're making is, is that enough that you can say all of
25 that goes away and zero is the right number, or does

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1 that raise the question that the claim is valuable?

2 SPECIAL MASTER: You're saying, I guess, that
3 there is a legitimate split of authority on this issue,
4 and, therefore, if there's a split of authority, you
5 can't say the claims are worth zero?

6 MS. KIRKHAM: Actually, there's nothing against
7 it. It's just not been litigated. The authority is
8 actually all on the side of the claim. The cases that
9 are cited against it in the briefs are not considering
10 it.

11 SPECIAL MASTER: They're dealing with state
12 law.

13 MS. KIRKHAM: They're dealing with state law
14 unjust enrichment claims or there -- there is the Ninth
15 Circuit case that wouldn't give the certain kind of
16 relief in the motor vehicles case that got cited down
17 the line for people saying so if you can't give federal
18 disgorgement, but when you read the motor vehicles case,
19 that's not what the Ninth Circuit was saying. On -- it
20 wasn't considering this kind of question, and it wasn't
21 saying you can never get money in an equitable situation
22 if you're an antitrust plaintiff.

23 SPECIAL MASTER: Okay. Before I leave you and
24 hear from other people, you cited Judge Renfrew's report
25 and recommendation and you cited like page 300 and

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1 something. And the report and recommendation that I
2 have from Judge Renfrew only goes up to page 200.

3 Are you referring to some other report.

4 MS. KIRKHAM: Yes, the Lexis -- I'm citing to
5 the pages of the -- of Judge Hamilton's order adopting
6 it, which attached the whole thing. So the paging is
7 off. If you've got one from him, you have what he filed
8 in federal court, so you'd have what it looks like in
9 the docket. What I was citing to is a brief. I'm sorry
10 for the confusion -- was a Lexis.

11 SPECIAL MASTER: Okay.

12 MS. KIRKHAM: So everyone would be able to have
13 it because you'd have to otherwise go to the DRAM
14 docket.

15 SPECIAL MASTER: Okay. Just for everybody's
16 information, I have access to Westlaw. I do not have
17 easy access to Lexis. Just --

18 MS. KIRKHAM: We'll send -- Your Honor --

19 SPECIAL MASTER: -- limited resources at JAMS.

20 MS. KIRKHAM: -- I will submit a letter that
21 redoes the citations to the -- I don't know if it's
22 still on Westlaw, but to the docket version, the DRAM
23 docket version of the report and recommendation.

24 SPECIAL MASTER: All right. Thank you.

25 Now, on this issue, does anyone else have

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1 anything to say? I presume the answer is yes.

2 MS. MOORE: I just wanted to point out that in
3 the original settlement in this case with Chunghwa, I
4 believe in their paper -- in the defendants' papers
5 where they were arguing for final approval, they argued
6 what is essentially the equitable monetary relief.

7 SPECIAL MASTER: Who argued it?

8 MS. MOORE: Chunghwa, and they said there was a
9 colorable federal claim in all 50 states, and they --
10 and the papers indicated that everybody would get paid,
11 which is why now here we are years and years and years
12 later and that's not happening.

13 So they -- they filed a -- it was the
14 plaintiffs who filed the motion for final approval, and
15 I think there were objections, and the defendants filed
16 an opposition or a reply to those objections, and it's
17 in those papers. I can find them if you want. They're
18 quoted in my original objection papers here, and then I
19 can find them for you if you want.

20 SPECIAL MASTER: All right. All right. Mr.
21 Bonsignore.

22 MR. BONSIGNORE: Briefly, Your Honor, there are
23 statutory claims in Massachusetts and New Hampshire,
24 although the New Hampshire ones might have postdated
25 prior to the settlements. New Hampshire also had and

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1 Massachusetts also have common law claims under their
2 consumer protection statutes. I cited those in the
3 brief. In fact, I was involved in both cases, and so I
4 know them very well.

5 With regard to Missouri, Missouri was in a
6 similar situation as Massachusetts and New Hampshire was
7 before the supreme court addressed it. And, in fact,
8 the attorney general of Missouri has taken a position
9 that indirect purchaser claims are allowed under those
10 states.

11 SPECIAL MASTER: Missouri is a repealer state,
12 isn't it?

13 MR. BONSIGNORE: Yes, it shouldn't be a
14 problem, but if I got to beat a dead horse, I'll beat a
15 dead horse briefly.

16 SPECIAL MASTER: All right. Consider it
17 beaten.

18 MR. BONSIGNORE: Briefly.

19 SPECIAL MASTER: Did you want to respond on
20 this issue? I don't know who is going to do it from
21 your side.

22 MR. ALIOTO: I'm going to address it, if you
23 don't mind, Your Honor.

24 SPECIAL MASTER: Before we -- before I give Mr.
25 Alioto a full -- full reign here, wasn't there some

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1 suggestion in one of the briefs that in the LG release
2 settlement, that the same type of release, same scope of
3 release was -- was given to LG that was given to the
4 defendants in these settlements and nobody raised a
5 peep. Is that true or untrue?

6 MR. ALIOTO: That's correct.

7 SPECIAL MASTER: Okay.

8 MS. MOORE: Your Honor, it becomes more obvious
9 at the time of distribution. A lot of times it's not
10 obvious until we get to distribution and then you
11 realize there are issues.

12 MR. BONSIGNORE: I was told by Mr. Alioto -- I
13 put it in my papers. I was told repeatedly that my
14 states would be taken care of at the end. And if I
15 hadn't heard that, I would have been jumping up and down
16 filing, objecting, going and zealously representing my
17 clients. It's horrible that those states are left out,
18 especially Massachusetts, because our law is stronger
19 than the California law. I know it's a debate, but I
20 always say it, and I'm going to say it now. To leave
21 out those states is no excuse. And once the mistake was
22 caught, it should have been corrected instantly. I
23 don't know what someone is thinking to think that that's
24 the way it should go through.

25 SPECIAL MASTER: Okay. I really think I need

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1 to give Mr. Alioto a chance here or his designee.

2 MR. ALIOTO: Okay. Thank you, Your Honor.

3 Just for the record, Mr. Bonsignore's --

4 SPECIAL MASTER: And let me focus your --

5 MR. ALIOTO: -- statements about what I said

6 and what I didn't say, I'm not going to go into that.

7 It's not evidence, but I want the record to be clear on
8 that. But go ahead, Your Honor, excuse me.

9 SPECIAL MASTER: Yeah, I mean the -- I really
10 understand all the arguments you've raised, but the core
11 question is is there a split of authority here, a
12 legitimate, not concocted, but a legitimate split of
13 authority as to whether there is a federal right of
14 action that indirect purchasers in non-repealer states
15 could pursue? And if there is that split of authority,
16 how -- how is it reasonable to value the claims at zero.

17 MR. ALIOTO: All right. Thank you, Your Honor.
18 I'd like to answer that, but I'd like to give Your Honor
19 the full picture of how these cases get settled and how
20 lead counsel in the exercise of his discretion --

21 MR. SCARPULLA: We cannot hear down here, Mr.
22 Alioto. I'm sorry. He has to speak up.

23 MR. ALIOTO: I think it would be important to
24 -- for Your Honor to hear the complete facts because
25 when we settle one of these cases, it's based certainly

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1 on the underlying law, the viability of claims. It's
2 based on the statute of limitations. It's based on
3 other things as well, and this is very important. This
4 is -- we're going to talk about notice or maybe we're
5 not going on talk about notice.

6 SPECIAL MASTER: Yes, we are.

7 MR. ALIOTO: We are going to talk about. Well,
8 maybe I can -- I can give a little preview on the notice
9 because it really has to do with the valuation of claims
10 and how we arrived at this settlement. And I know this
11 is all in the papers, but it's -- it's not -- maybe it's
12 not as clear as it can be how this notice program and
13 how the history of this case informed my decision to
14 settle on the basis that we did.

15 And by that I mean this: There have been three
16 nationwide notices in this case: Chunghwa, LG -- the LG
17 was actually a combined notice of the LG settlement and
18 a notice of class certification, but that was a separate
19 nationwide notice. Very similar to this third notice
20 when all the bells and whistles, newspaper, Internet,
21 email, very, very extensive. Three programs, massive
22 notice programs.

23 The direct purchasers, they may have even given
24 more notices because I think they did their settlements
25 differently. They may have had separate settlements,

1 and they didn't lump them. And there were at least
2 three notices in the direct case.

3 Now those notices were targeted at direct
4 purchasers, but they were nationwide in scope. There's
5 publication in the Wall Street Journal, there's
6 publication in other publications. There's wide
7 dissemination. So you have six notices.

8 These claims and these cases, and these -- this
9 litigation against these defendants for these products,
10 it's no secret. This has been going on for eight years.

11 There's also reference in the brief to
12 something known as a CAFA notice, and we just kind of --
13 kind of make passing mention to this. This is really
14 not part of our notice program. It's something that
15 defendants are required to do under the Class Action
16 Fairness Act. Every time there's a preliminary approval
17 in one of these indirect purchaser cases, each defendant
18 who has settled and is going to be -- and their
19 settlement is going to be proposed for preliminary
20 approval, they prepare a CAFA notice. This is what one
21 looks like.

22 It's very comprehensive. It sends the attorney
23 general, attorneys general, all 50 of them all of the
24 important documents in the case: the notices, the
25 evidence, the rulings, the classes certified, the

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1 classes not certified, who the claimants are. It's a
2 very comprehensive report by 52 -- by the defendant to
3 52 attorneys general and the Department of Justice.

4 I'll just hand that up to you for your
5 reference.

6 The point I want to make there, Your Honor, is
7 that in this case, there have been nine settlements, so
8 nine defendants, if my math is right, each of those nine
9 defendants sent out 51 CAFA notices. Each defendant
10 notified every state attorney general in the United
11 States, and each defendant notified the Department of
12 Justice. By my calculation that's 459 CAFA notices to
13 the highest ranking law enforcement officials in every
14 state.

15 Where are the attorney generals saying there's
16 viable law and I'm going to bring a case? Where are the
17 attorneys general, people, law enforcement officers, not
18 people with axes to grind or not people with agendas,
19 law enforcement officers, where is the response to those
20 CAFA notices?

21 Well, one response is Mr. Varanini. He's in
22 here, but he doesn't have any problem with the issues
23 that are being raised by these objectors. I just want
24 Your Honor to be aware of these issues. They're out
25 there. They're out in the public domain, notices given

1 to the people that are charged with making these
2 decisions. And when you don't hear anything from any AG
3 and there's no reaction and no -- certainly no contest
4 or no challenge by those law enforcement officers, that
5 really weighs heavily in my decision.

6 Let me add to that this: Let's not forget the
7 importance of opt-outs. Is there someone -- of course
8 this debate is not about, as you say, it's not a law
9 review debate. It's not about these claims and are they
10 viable and is there -- is there law. This is not an
11 academic debate. This is a debate about is there a
12 client out there with a lawyer who wants to bring a
13 claim or is sitting on the sidelines thinking about
14 bringing a claim and we're wiping his rights out.
15 That's the issue.

16 It is highly, highly, highly improbable that
17 someone is going to step forward and assert some claim
18 against these defendants for a global cartel and seek to
19 establish damages on an individual basis and probably
20 even more difficult on a class basis for -- for one
21 state.

22 These kinds of things go into my analysis as
23 lead counsel in consultation with people that I'm
24 working with in the case, which are some of the best
25 people you can possibly work with in these cases. This

1 is what goes into my analysis.

2 So is it science? Yes, it's science. We
3 review the law. We look at the standing issues. We
4 look at statute of limitations issues. We also take
5 this pragmatic approach: What is the -- what is the
6 risk or what is the chance that after this case has been
7 around for eight years with multiple notices, with 459
8 notices to the attorneys general and the Department of
9 Justice, what's the chance that there is a live claim
10 somewhere out there that's being compromised? Almost
11 nil, Your Honor. You can't say zero, you can never say
12 zero, but I would say it's close to zero as you could
13 possibly get.

14 SPECIAL MASTER: Okay. So -- but you have to
15 notice that the difference between what was done here
16 and what was done in LCD, accepting your point that
17 claims by -- for any kind of monetary relief by people
18 in non-repealer states would be very challenging, would
19 be an uphill battle, accepting that, still the
20 defendants in this case I take it insisted on a release,
21 whereas in LCD those claims, as I remember, were not
22 released; that is, whatever claims, weak or strong, that
23 people in non-repealer states had for monetary relief,
24 were -- were not released in the settlement.

25 I don't know if my memory is right, but I think

1 that's the case.

2 MS. KIRKHAM: Yes.

3 MR. GOLDBERG: That's correct.

4 MR. ALIOTO: Yeah. Now, LCD here --

5 SPECIAL MASTER: So here the defendants got
6 releases, in LCD they didn't. There could have been a
7 thousand reasons for that. And it's -- I don't want to
8 go into them but...

9 MR. ALIOTO: Well, I don't know that there's a
10 thousand, but there are different -- there were
11 different reasons because you had claims by AGs in that
12 case, actual pending claims that were different from
13 claims that were alleged as the classes, and there were
14 viable pending claims. But when you come right down to
15 it, the question is was it reasonable to settle these
16 claims. And I want to just focus on this distinction
17 for a minute because this is very important.

18 SPECIAL MASTER: Before you take another
19 breath, how is the court reporter doing?

20 THE REPORTER: I'm okay.

21 MR. ALIOTO: Okay. Remember, we throw these
22 terms around loosely or I try not to throw these terms
23 around loosely, but I want to focus on viable claim.
24 Viable claim means you analyze something, and that means
25 that if someone can provide the facts, the law will

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1 afford him a remedy. That's what we're referring to
2 here. Viable. Does the law support the claims if the
3 facts bear it out.

4 That concept gets lost and gets confused with
5 this question of nuisance claims or -- or these un- --
6 unproven claims. Nuisance claims. And I -- I don't
7 think it's a good idea, and I don't think the class
8 action law in fashioning these settlements ought to be
9 giving consideration to be giving payments to claimants
10 for nuisance claims because sometimes you can get
11 payment on a claim if it's not viable.

12 So to the extent that's being suggested, and I
13 think it is. Look, don't wash those claims out for
14 nothing because those people could have asserted these
15 claims and they could have gotten something. Well, they
16 could have gotten something, but it would have been on a
17 nuisance basis. I think that's very important to keep
18 that distinction.

19 The other -- not to repeat what's in the
20 briefs, but recently Judge Tigar in approving the
21 settlements in the direct purchaser case, he took note
22 of and was very important factors for him the number of
23 objectors and the number of opt-outs.

24 Here we have a very small number of objectors
25 and we've given you some background on those objectors,

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1 where they're coming from, and a couple of those
2 objectors have already dropped their objections. But
3 you have a pretty good record on what those objectors
4 are about. We have three opt-outs in this case after
5 eight years, after multiple notices, after 459 CAFA
6 notices.

7 SPECIAL MASTER: Were any of those in -- were
8 any of those in non-repealer states?

9 MR. ALIOTO: I don't know the answer to that
10 question.

11 SPECIAL MASTER: Okay.

12 MR. ALIOTO: But I want to emphasize this
13 opt-out mechanism because it's very important. That's
14 what protects someone who thinks they have a claim or
15 that wants to make new law or wants to go off on
16 unproven ground and assert something. They have the
17 opportunity to do that, and you can't just pooh-pooh it.

18 SPECIAL MASTER: Fair point. I think I know
19 the impact of opt-outs.

20 MR. ALIOTO: All right. So that's the notice
21 component, but it also bears on the -- on the releases.
22 This class has had probably unprecedented notice with
23 multiple -- with multiple notifications. That's
24 important. So how did we come to the -- our conclusion?
25 It's all in the brief. The injunctive relief, not

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1 viable. They're out of the business. Sure, I could
2 have gone to the defendants and said --

3 SPECIAL MASTER: I get injunctive relief.

4 MR. ALIOTO: Okay.

5 SPECIAL MASTER: The real -- again, just
6 tentatively, I'm not so troubled by the injunctive
7 relief issue. I'm not so troubled by the damage issue.
8 The issue that is more troublesome is this one of
9 equitable monetary relief.

10 MR. ALIOTO: Yes, and Your Honor, I'll just say
11 this -- it's in my papers -- it's completely
12 speculative. There is no claim. There is no client.
13 There is no lawyer. There is no lawsuit.

14 SPECIAL MASTER: Was a claim -- I -- it would
15 be helpful to me, Lauren, if you could see that I get
16 copies of or give me the docket numbers or something so
17 I can easily find copies of the four complaints in this
18 case, because I want to know what -- what was actually
19 alleged. Was there ever a claim either for injunctive
20 relief or equitable relief or damages asserted on behalf
21 of the people in either the non-repealer states or the
22 three omitted repealer states? Was there ever a claim
23 asserted and was it ultimately dismissed? What happened
24 to it?

25 MR. ALIOTO: Yes, it was asserted. It was

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1 never formally dismissed. It -- it -- it lingered on
2 through the life of the case.

3 SPECIAL MASTER: So if I look in the fourth
4 amended complaint, will I find it?

5 MR. ALIOTO: Yes.

6 MR. COOPER: It's pending is the answer.

7 SPECIAL MASTER: So it's there.

8 MR. COOPER: It's pending.

9 SPECIAL MASTER: It's in the works. It was
10 never --

11 MR. ALIOTO: It's an allegation.

12 SPECIAL MASTER: Right.

13 MS. CAPURRO: There was no injunctive relief
14 class certified at the class certification.

15 SPECIAL MASTER: Right. Okay.

16 MR. COOPER: It was pending.

17 SPECIAL MASTER: Mr. Bonsignore, you're just
18 going to have to chill down there and sit down. I'll
19 get to you.

20 MR. ALIOTO: All right. Your Honor, if you
21 don't mind, I'd just like to have my colleague make just
22 a couple of remarks on this maybe to just sharpen some
23 of these issues up, Mr. Duncan.

24 MR. DUNCAN: Your Honor, just very briefly, I
25 want to cut to the chase on the Illinois Brick

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1 question --

2 SPECIAL MASTER: Oh, don't do that.

3 MR. DUNCAN: -- and the federal disgorgement
4 claim. So the question is whether there's a split of
5 authority, whether it's in some sense viable. The
6 answer's no. There's not a split of authority. At most
7 it's a hypothetical law review article that someone
8 might want to write.

9 The Illinois Brick is the law of the land.
10 It's been the law of the land for 40 years. If you
11 could end run Illinois Brick simply by filing a federal
12 disgorgement claim, Illinois Brick wouldn't exist, and
13 people would do that. That's the way these cases would
14 be litigated.

15 SPECIAL MASTER: Did any court ever say that?

16 MR. DUNCAN: Absolutely. We've cited one case,
17 a Ninth Circuit case that's controlling that says there
18 is no disgorgement remedy under a private plaintiff
19 under a federal law.

20 SPECIAL MASTER: Okay.

21 MR. DUNCAN: That's in our most recent reply
22 brief. There's a Northern District of California case
23 to the same effect. If you went around the country,
24 every time someone has tried to end run Illinois Brick
25 in this fashion, I'm aware of no case where a private

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1 class or private plaintiff have been allowed to pursue
2 those claims.

3 SPECIAL MASTER: Okay.

4 MR. DUNCAN: Now the objectors have stated that
5 governments -- it's arguably an open question whether a
6 government body can make use of a disgorgement remedy.
7 Private plaintiff --

8 SPECIAL MASTER: So it's the State of Oregon?

9 MR. DUNCAN: Correct.

10 SPECIAL MASTER: Okay. I thought I heard
11 Ms. Kirkham suggest that there were cases that said no
12 end run with respect to state law.

13 MR. DUNCAN: That's absolutely true also.

14 SPECIAL MASTER: But that there were no cases
15 with respect to the federal Clayton Act, Sherman Act.

16 MR. DUNCAN: That's not true. The cases hold
17 to the contrary.

18 SPECIAL MASTER: And you've cited those in your
19 --

20 MR. DUNCAN: Some of them, and there are others
21 in other circuits. We've cited the Ninth Circuit law.

22 MS. KIRKHAM: Your Honor, this is an
23 interesting point. You're saying that there is a case
24 in which an antitrust price fixing class or plaintiff
25 tried to bring an equitable monetary claim, and the

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1 Ninth Circuit said Illinois Brick barred that claim
2 because you cannot end run --

3 MR. DUNCAN: That's not what I said. What the
4 Ninth Circuit held is that there is no disgorgement
5 remedy for a private plaintiff, not a class case. We're
6 not talking about class action. No private plaintiff
7 has a disgorgement remedy under Section 16, period.
8 It's a square hole, and there's -- the law is uniform on
9 that point nationwide.

10 SPECIAL MASTER: Okay. I don't want any more
11 argument about what the case says because we can read
12 it, so -- and make our own judgment for better or worse.

13 MS. KIRKHAM: I also would just like to mention
14 that in LCD Oregon was acting as a private plaintiff.

15 SPECIAL MASTER: Right.

16 MS. KIRKHAM: It had a parens patriae claim.
17 It was not acting --

18 SPECIAL MASTER: Okay.

19 MS. KIRKHAM: You know that.

20 SPECIAL MASTER: I do know that.

21 Okay. I'm thinking of taking a break if we
22 have beaten this issue to death. If there are other
23 people in the room who have something to say on the
24 repealer, you know, non-repealer issue and it's not too
25 long, let's get it out.

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1 Mr. Bonsignore, you've been very active down
2 there.

3 MR. BONSIGNORE: As to the allegation that
4 there was a nuisance claim with regard to the three
5 excluded states, there were no nuisance claims involved.
6 The Massachusetts statute allows for treble damages and
7 attorneys fees. The New Hampshire allows for punitive
8 damages and attorneys fees. I'm less familiar with
9 Missouri, but I'll rely on those two.

10 Mr. Alioto seeks to personalize the issues and
11 play the blame game, blaming the victims for not
12 objecting, blaming lawyers for not being present, and I
13 would like to remind him that lead counsel in a
14 nationwide class action is obligated to represent the
15 interests of all class plaintiffs including the named
16 and unnamed plaintiffs in each and every state
17 encompassed within the class they seek to represent.
18 That's Radcliffe, 715 F.3d 1.57 at 1167.

19 SPECIAL MASTER: These points have been made
20 very cogently and repeatedly in the briefs.

21 MR. BONSIGNORE: Okay. Then I would -- then
22 I'll -- I'll just skip over the law. I'm sure you've
23 read it.

24 As to the statements that Mr. Alioto was making
25 that there were no lawyers and no plaintiffs available

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1 to him, I became apoplectic, as you noticed. I request
2 only to be able to supplement the record based on his
3 statements. I submitted evidence, unequivocal evidence
4 that Mr. Alioto was aware of plaintiffs in Massachusetts
5 and New Hampshire and Missouri and that he ignored them.
6 He wasn't even aware that he was aware. There were
7 emails to him. After he was reminded, they changed
8 their argument in their reply brief.

9 So in light of the fact that he made an
10 absolute false statement that can be objectively blown
11 up with the allowance of my supplement, I would request
12 that formally.

13 SPECIAL MASTER: Okay. Any requests to
14 supplement the record should be made in writing.

15 Yes, sir?

16 MR. SCARBOROUGH: Yes, Your Honor, again Mike
17 Scarborough for the Samsung SDI defendants.

18 With respect to Massachusetts just, you know,
19 this case goes a long way back. There was a claim on
20 behalf of Massachusetts consumers originally brought in
21 the case. We filed, defendants, multiple motions to
22 dismiss, and we had very able opposition to those
23 motions from lead counsel. Those were hard fought
24 battles, and ultimately I believe it was two different
25 rounds of motions to dismiss, and we had various attacks

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1 on that claim mostly on procedural bases. Defendants
2 won. So it was a claim that was litigated extensively
3 and that was thrown out, and defendants prevailed on a
4 motion to dismiss.

5 MR. BONSIGNORE: In response, Your Honor --

6 SPECIAL MASTER: Wait, wait, wait.

7 MR. BONSIGNORE: Okay.

8 SPECIAL MASTER: I just need to do this one by
9 one. As I understand it, Judge Legge finally lost
10 patience and dismissed the claim for failure to make
11 some what he considered necessary allegation. The
12 defendants prevailed. The claim was gone. But Judge
13 Legge said in his -- in his decision this would not bar,
14 you know, the bringing of a valid claim later on.

15 Do I have it right.

16 MR. SCARBOROUGH: I'm not -- again, it's been a
17 while since I looked at these papers.

18 SPECIAL MASTER: That's just what --

19 MR. SCARBOROUGH: I don't know if that last
20 part is correct necessarily, but I don't think it was
21 necessarily an invitation for lead counsel to pursue
22 such a claim.

23 SPECIAL MASTER: Okay.

24 MR. BONSIGNORE: Your Honor, lead counsel is
25 the only person who has the responsibility to do that.

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1 And beyond that on that point, it was a procedural issue
2 that could have been corrected in three seconds by the
3 issuance of a subsequent demand letter, and it would be
4 totaling, it would go back, and that would be that.

5 And I will also point to *Kayes versus Pacific*
6 Lumber Company 51 F.3d 1449 --

7 SPECIAL MASTER: We can't -- if you're citing
8 cases that aren't in your brief, I --

9 MR. BONSIGNORE: No, they're in the brief. I'm
10 just reminding -- I'm highlighting them. *Kayes versus*
11 Pac. Lumber, 51 F.3d 1449. The responsibility of class
12 counsel to absent class members whose control over their
13 attorneys is limited. And that's the point that I'm
14 making. The class members, lawyers other than lead
15 counsel, and more in this case than any other case I've
16 been in, had no sway whatsoever. He ran it like a
17 dictatorship. We had no control. All we could do was
18 argue and complain.

19 SPECIAL MASTER: All right. Thank you.

20 Ms. Moore, final, final, yes.

21 MS. MOORE: With regards to Massachusetts, Your
22 Honor, an error was made. An error was made two times.
23 It could -- Massachusetts could still have been valued
24 and put in the settlement and was not. And this is a
25 case in LCD. We just -- between Massachusetts and

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1 Missouri, my partial investigation -- I haven't talked
2 to all the aggregators, but there was 41 and a half
3 million dollars distributed in LCD between those two
4 states alone.

5 SPECIAL MASTER: Okay. Well, let me --

6 MS. MOORE: So this is a valuable case that
7 they could have valued and put in the settlement and
8 they chose not to.

9 SPECIAL MASTER: Okay. Is it the duty of lead
10 counsel -- and I know we have a number of people in the
11 room who have served as lead counsel. Is it the duty of
12 lead counsel to go around to every state and phone
13 lawyers and say, you know, go make a claim, go scrounge
14 around and get a class representative. Is that part of
15 the fiduciary duty of lead counsel?

16 No, Mr. Bonsignore.

17 Go ahead.

18 MS. MOORE: Yes, Your Honor, I think he's
19 putative counsel -- he's counsel -- lead counsel is
20 appointed and is given this duty, and it is his
21 responsibility to make sure that these claims are
22 pursued. And I do think he has a right to make sure --

23 SPECIAL MASTER: But is it his duty --

24 MS. MOORE: -- that people are not left out.

25 SPECIAL MASTER: Is it his duty to find claims,

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1 to unearth claims, to create claims?

2 MS. MOORE: Well, actually, even in this case
3 it isn't even relevant because we had plaintiffs. But
4 yes, I do think he should do that, and, in fact, there's
5 law that --

6 SPECIAL MASTER: You had plaintiffs in
7 Massachusetts. Did you have plaintiffs in New Hampshire
8 and Missouri?

9 MS. MOORE: Yes.

10 SPECIAL MASTER: Okay.

11 MS. MOORE: They existed.

12 SPECIAL MASTER: And what happened to them?

13 MS. MOORE: They just were never pursued. They
14 were just abandoned.

15 SPECIAL MASTER: Okay.

16 MR. SCARBOROUGH: Your Honor, just one very
17 quick point to add on Massachusetts. As I recall, there
18 were attempts to cure the defect with the -- it was
19 basically sending a demand letter, and lead counsel did,
20 and whatever associated Massachusetts counsel did try
21 and fix that defect. The defendants argued at that
22 point you couldn't do it. You couldn't fix it. This
23 was not a problem that could be remediated, and the
24 claim had to be thrown out.

25 And as I recall it, that was the view that

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1 prevailed with Judge Legge. So these arguments to the
2 contrary that hey, this was simply send a later demand
3 letter and it can all be fixed is just not true, it's
4 just not what Judge Legge found.

5 SPECIAL MASTER: I'm going to ask and then
6 we're going to take a break. I want someone to tell me
7 dispassionately without a lot of adjectives and
8 invective what happened in New Hampshire and what
9 happened in Missouri.

10 No, I'm going to get another volunteer, Mr.
11 Bonsignore.

12 MS. MOORE: The claims were never filed. There
13 was never a claim filed --

14 SPECIAL MASTER: Okay. I'm going to ask --

15 MS. MOORE: -- by lead counsel.

16 SPECIAL MASTER: Ms. Moore, thank you.

17 Go ahead.

18 MR. ALIOTO: Thank you, Your Honor. From lead
19 counsel's perspective, you can only bring claims for
20 those people who stepped forward and wanted to assert a
21 claim. We gathered all of the claims, all of the
22 complaints that were filed at the institution of the
23 case. We reviewed those. Some -- there was an
24 extensive vetting process that went on for months. Some
25 claimants survived that process. Others didn't.

1 There were also discussions as the case went on
2 to -- to the later years of the case. There were
3 discussions about other class representatives,
4 discussions with lawyers who thought they had clients,
5 and those were vetted up the line and eventually to me,
6 and decisions were made as to the viability of
7 plaintiffs.

8 SPECIAL MASTER: So what happened in New
9 Hampshire and Missouri?

10 MR. ALIOTO: There was never any plaintiff that
11 I -- certainly I didn't represent anyone, and no
12 plaintiff in Missouri was ever brought to my attention
13 as being out there and wanting to press a suit. That is
14 the absolute fact.

15 It was, as is the case in a lot of these
16 multistate cases, sometimes there are not claimants for
17 these states. This is a big responsibility, Your Honor,
18 to step up in one of these cases. You know what goes
19 into that.

20 SPECIAL MASTER: Okay. What about New
21 Hampshire?

22 MR. ALIOTO: I don't believe there was ever a
23 client proffered. Mr. Bonsignore has mentioned
24 something in his papers about late in the game that
25 there was a -- he had someone and someone was ready to

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1 go. I viewed that with extreme caution because when you
2 make a decision like that to put somebody forward for a
3 state, it's very important. It's not only important for
4 that state, it's important for the whole case.

5 SPECIAL MASTER: I remember your briefing on
6 this point now.

7 MR. ALIOTO: The statute had run. The simple
8 answer is without the invectives, the statute had run at
9 the time he brought that up.

10 SPECIAL MASTER: Okay.

11 MR. ALIOTO: But can I make one point without
12 invective or adjective? We have quite a different view
13 about abandoning and not representing and, you know,
14 sloughing people off. But, you know, the simple answer
15 to that is Ms. Moore and Mr. Bonsignore and all these
16 other people after the fact, you got the papers. You
17 know what classes are represented and are not
18 represented. Go out to the federal courthouse. File a
19 complaint. The complaint will be transferred into this
20 district, and we would love nothing more for them to
21 have done that at the time.

22 I can't dictate to them. If they had a client
23 and they felt strongly about this, file a case, it will
24 be transferred in, and we'll deal with it. But after
25 the fact, you know, after the money is in the bank and

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1 Mr. Alioto, you didn't do this and Mr. Alioto, you
2 didn't do that, well, we did \$576 million worth of right
3 things. And that's what we're trying to get approved.
4 And this is -- with all due respect to these objectors,
5 this is just -- let me say it's a side show. Thank you.

6 SPECIAL MASTER: Okay. We're going to take a
7 break now for like ten minutes, and then we'll come back
8 and deal with the other issues. Thank you.

9 (Recess 11:34 a.m. to 11:47 a.m.)

10 SPECIAL MASTER: I'd like to move on to the
11 notice issue. If anybody has anything more to say on
12 this repealer issue, you can say it at the end when I
13 give you a chance to raise any issues that haven't
14 otherwise been raised. But we need to cover the
15 waterfront here, so I'd like to move on to the issue of
16 whether the notice was adequate again.

17 I've read the briefs, I understand the problems
18 that have been raised with the notice. I understand the
19 responses of lead counsel and the declaration -- various
20 declarations of Mr. Fisher. So, you know, I think I'm
21 pretty well up to speed on this, but I'd like to hear --
22 give you a chance to say anything that needs saying.

23 Anyone from the objectors side like to be heard
24 on this issue?

25 MR. SCARPULLA: Francis Scarpulla, Your Honor.

1 I think we said it pretty much in our brief, and I am
2 not going to repeat that. We just would urge that Your
3 Honor may wish to consider hiring an independent expert
4 to opine on it.

5 Now I've done a hundred-plus notices, and so
6 when you see one where the only evidence -- where the
7 only hard evidence you have is a reach of 58 percent,
8 then there is a problem, especially since as Mr. Fisher
9 points out, if you use the early years, the class
10 members were between six years old at the start of the
11 period and 18 at the end of it if you use his early
12 years. I don't even think they had -- even at the end
13 of the period, 18 year olds don't have the right to form
14 contracts. Put that aside.

15 If you use his later years, then it's 12 to 22.
16 I'm sorry, 10 to 22. Those are -- that's the ages of
17 the people that he targeted during the -- during the
18 period of the -- of the price fixing.

19 And again, those TVs as -- as the LCDs came
20 into the market, there was a great decline in the sales
21 of CRTs, and they were being bought by individual family
22 units that didn't have a lot of money because they were
23 much cheaper than the LCDs. And to target someone who
24 had income of 60,000 or more misses a whole group of
25 those individual class members.

1 And one thing that Your Honor may ask for,
2 which I have not been able to get, I don't know the
3 number of individuals, human beings who have made
4 claims, and that's something that I would respectfully
5 suggest Your Honor may wish to find out.

6 Now we know that there are the big corporations
7 that put in claims, but the question is how many natural
8 persons put in claims. So I'm not going to repeat
9 anything else in the brief.

10 SPECIAL MASTER: Okay. You said the only hard
11 evidence is that the reach was 58 percent. I mean Mr.
12 Fisher says it was 83 percent. Why is that not hard
13 evidence?

14 MR. SCARPULLA: Because he's saying -- he's
15 saying I think our Internet reached so many people, but
16 there's nothing -- you have no hard evidence that
17 anybody saw it or that they did anything about it.

18 SPECIAL MASTER: So I don't know how many
19 clicks and so on?

20 MR. SCARPULLA: You have no idea.

21 SPECIAL MASTER: All right.

22 MR. SCARPULLA: And in fact, Your Honor, they
23 had to come to the DRAM database and get that database
24 from us to send out supplemental notices because the
25 notice program was so -- was so flawed.

1 SPECIAL MASTER: Good. Anyone else have
2 anything to add on this issue?

3 Mr. Alioto, why would it not be interesting to
4 know this data: How many claims have been submitted,
5 what's the dollar volume, what's the -- where are they
6 from, how many are natural individuals, how many are
7 from the state of California to satisfy the attorney
8 general? Why would it not be interesting to know that
9 and evidently has not been made available?

10 MR. ALIOTO: Yes, thank you, Your Honor. Mr.
11 Duncan and Mr. Novak are going to be responding to those
12 notice issues.

13 SPECIAL MASTER: Okay. Mr. Duncan.

14 MR. DUNCAN: Sure. Your Honor, Matthew Duncan
15 from Fine Kaplan again.

16 I think -- I think in a vacuum that information
17 will be interesting. The problem -- the issue is that
18 the process is ongoing. Claims are still -- many were
19 received at the end. The claims administrator is still
20 processing that and then certainly that information is
21 going to be known to the court. The issue is that it's
22 not -- it's not germane to settlement approval and
23 whether the standard for notice is met *ex ante*.

24 So bear in mind, the extent to which all of
25 these issues were considered exhaustively at the

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1 preliminary approval stage. Everything that was going
2 to be done notice-wise was vetted then. It was done.
3 There's an extensive record at this point about
4 everything that was done and the effectiveness of it.

5 To speak briefly to the point that there's no
6 hard evidence about the reach statistic, that's just
7 wrong. I mean, Mr. Fisher's declaration includes
8 exhibits that say, you know, for the digital outreach
9 precisely what was done, the number of impressions.
10 Google, for example. Google is the search engine.
11 There were Google banner ads done throughout the Google
12 ad network. Google search results, paid search results
13 were returned. This is just one example of the digital
14 outreach. Two hundred million plus impressions on that
15 kind of thing. And the data is in Mr. Fisher's
16 declaration.

17 SPECIAL MASTER: By impressions, what do you
18 mean?

19 MR. DUNCAN: Well, by impressions, that means
20 that when something in the Google network, in the Google
21 ad network website is visited, there's a banner ad that
22 someone sees. Now whether they actually click on that,
23 you don't know. We don't have that data. But you know
24 that someone saw the banner ad within the network. And
25 so that's what the impression data does. And there's a

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1 long list of digital outreach that was done. We have
2 the impression data for all of that. And then what Mr.
3 Fisher does is feed that data into the comScore system,
4 which is what marketing professionals and everyone else
5 uses to do this, to calculate the reach.

6 So at the end of the day, Mr. Fisher has
7 explained what he did. He's given you the data that
8 went into comScore and then the comScore is the upshot
9 of all of that. And nobody has really -- it's the way
10 it's done, and nobody has shown otherwise in any of the
11 projections.

12 So the reach is the reach. It's well within
13 the standard. It's -- it's best -- best practicable
14 notice for all of those reasons, and we think the record
15 is more than robust to find the notice requirements have
16 been met.

17 SPECIAL MASTER: So when -- when would you
18 expect to provide this information to the court assuming
19 I don't tell you to do it sooner at the -- at the time
20 the final papers are filed on the motion for final
21 approval?

22 MR. DUNCAN: I think Mr. Alioto probably knows
23 a little bit more about this than I do. But
24 conceptually, I mean, that's part of the claims process
25 reporting that would happen at the allocation phase.

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1 MR. ALIOTO: We intend to be doing that,
2 although there is this issue raised by the state of
3 California about extending the deadline, so to the
4 extent it's extended, you won't have it complete until
5 that deadline runs.

6 SPECIAL MASTER: But can't we know how things
7 stand now? I mean, I understand the argument that a
8 court has to evaluate a notice program *ex ante* before it
9 knows how it's actually going to work and make a
10 decision as to whether it's the best practicable. And
11 the court here has done that. But gosh, just common
12 sense tells you it might be nice to see what the results
13 are.

14 MR. ALIOTO: I will check with the
15 administrator today and report on where he is and
16 whether and when that information can be made available.

17 SPECIAL MASTER: And if it's robust, I should
18 think you'd be the first one to be trotting it out
19 there.

20 Okay. Anything else on notice? Let's see if I
21 have any questions.

22 MR. COOPER: Your Honor, I assume that our
23 suggestion about an independent expert is something
24 you're considering? I mean, I'm not asking for a
25 response. I just -- you haven't rejected it?

1 SPECIAL MASTER: I know -- I have not rejected
2 it.

3 MR. COOPER: Right.

4 SPECIAL MASTER: I mean -- say I were to do
5 that. What -- what different information would they --
6 I mean I guess they might provide an opinion that's
7 different than Mr. Fisher's opinion, but then I just
8 have a battle of experts, and how has the ball been
9 advanced?

10 MR. DUNCAN: Your Honor, that's a good point
11 and it is -- Mr. Fisher is an expert. He's done this
12 many times. His CV is in the record. Everything he's
13 done is in the record, and all of this would lead at
14 most to quibbling about how a different expert might do
15 something slightly differently at the margin. And
16 that's not the standard for whether notice is
17 reasonable. The standard is whether it's reasonable on
18 its own terms, not whether different lawyers might have
19 done something differently on margin or whatever.

20 SPECIAL MASTER: Okay. Mr. Scarpulla or Mr.
21 Cooper, or you can both speak at once.

22 MR. SCARPULLA: Yes, Your Honor, the reason
23 that you -- the reason for an independent expert is so
24 that he or she can tell you the flaws in the notice
25 program that Fisher -- Fisher is --

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1 SPECIAL MASTER: Or the absence of flaws. If I
2 hire an independent expert --

3 MR. SCARPULLA: -- or absence of it.

4 SPECIAL MASTER: -- not one that you suggested,
5 if I hire an independent expert --

6 MR. SCARPULLA: Correct.

7 SPECIAL MASTER: -- he might say or she might
8 say everything is dandy.

9 MR. SCARPULLA: You're absolutely right.

10 SPECIAL MASTER: Is that correct?

11 MR. SCARPULLA: That's absolutely correct. And
12 then you -- Mr. Fisher was a former lawyer who didn't
13 make it in the practice of law and decided to go into
14 this business. You can't do --

15 SPECIAL MASTER: We all make life choices.

16 MR. SCARPULLA: You can't do nationwide notice
17 of any significance for \$1.5 million. That's not
18 possible.

19 SPECIAL MASTER: I noted that figure.

20 MR. SCARPULLA: It would cost at least 4 or 5
21 million to get the kind of reach to 80 or plus percent,
22 and that's the whole point of having an independent
23 expert.

24 MR. COOPER: I would just say, Your Honor, that
25 I think you put your finger on it. This is an

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1 independent expert, someone that works for the court
2 who's not in an advocacy position. It's not like you
3 get two sides putting up their own experts who are
4 advocating for the two sides. This is someone who would
5 evaluate it, and give you an independent view. And I
6 think that's a totally different thing. You'd have
7 to -- they might say it was fabulous and put an end to
8 all these questions about notice.

9 SPECIAL MASTER: Or they might be competitors
10 of Mr. Fisher and love to get a whack at him, you know,
11 so...

12 MR. COOPER: Well, I guess that's a theoretical
13 possibility but...

14 MR. ALIOTO: Your Honor, let's not forget, when
15 we were working on the schedule, and the objectors
16 needed all of this time and this elongated schedule,
17 there were statements made by Mr. Scarpulla that he
18 needed time to retain an expert. Well, he got the time,
19 but he has not retained an expert. Instead, he's come
20 in and said well, we're not going to retain anybody. We
21 want you to go get an independent expert. There's no
22 basis on this record to do that, especially after he
23 initially indicated that he was going to pursue that
24 himself.

25 SPECIAL MASTER: Okay. Mr. Bonsignore?

1 MR. BONSIGNORE: Yes. Mr. Alioto is entitled
2 to an opinion, but so is Mr. Scarpulla and the other
3 objectors. It was one option to hire the excluded
4 plaintiffs' reviewer. The smarter option is to have the
5 court hire their own because then it's absolutely
6 independent and it wipes out the argument oh, it's a
7 battle of the experts. That's gone. So you're
8 presented only with -- I'll summarize my -- so you're
9 presented only with someone who you hired and the
10 argument that it's a battle of the experts is entirely
11 eliminated. Thank you.

12 SPECIAL MASTER: All right. The next issue
13 that is on my mind is this -- the impact of the Chunghwa
14 settlement. And I confess to be confused as to what the
15 objectors are really saying is the problem created for
16 this settlement by the terms of the Chunghwa settlement.
17 I forget who -- whether it was Ms. Moore who -- go
18 ahead, Mr. Cooper --

19 MR. COOPER: I think --

20 SPECIAL MASTER: -- or Ms. Kirkham. Either
21 one.

22 MR. COOPER: Go ahead.

23 MS. KIRKHAM: We didn't say that it was a
24 problem for the settlement approval. We said it was a
25 problem for the approval of the plan of allocation

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1 because the plan of allocation ignores the existence of
2 the Chunghwa settlement. And the Chunghwa settlement
3 has some very specific terms in it about how the money
4 is to be paid out and to whom. So that was what we
5 raised.

6 We simply said that it was -- that the problem
7 was that the Chunghwa settlement, which is final,
8 provides a plan of allocation. That plan of allocation
9 is not incorporated into this plan of allocation, and
10 this plan of allocation would -- is inconsistent with
11 that plan of allocation.

12 SPECIAL MASTER: How?

13 MS. KIRKHAM: Okay. The Chunghwa --

14 THE WITNESS: I know your brief said this but I
15 --

16 MS. KIRKHAM: That's okay. I can go through it
17 fairly quickly.

18 The Chunghwa allocation provides for the
19 settlement money to be divided up among certain states
20 with -- proportionate to census data. So they would --
21 so it creates pots that are fixed amounts. Then claims
22 would be solicited. So -- as opposed to a pro rata
23 among all of the people that the plan of allocation
24 deemed entitled to receive money, which is the current
25 plan, you can see there'd be a real difference if

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1 there's \$10 million in California's pot and \$7 million
2 in Arizona's, or \$5 million or -- well, some other
3 state. Arizona is not a good, actually, example.

4 MR. COOPER: It also includes Illinois, Oregon
5 and Washington.

6 MS. KIRKHAM: Right, it does include Illinois,
7 but the point I'm trying to make --

8 MR. COOPER: It generally includes
9 distributions to Illinois, Washington and Oregon who are
10 excluded --

11 (Reporter clarification).

12 The distribution in the judgment includes
13 payments to Illinois, Oregon and Washington AGs who are
14 not in these settlements. But there is no provision for
15 that coming out. And also that class, that settlement
16 class includes resellers of product.

17 SPECIAL MASTER: So what should we do?

18 MR. COOPER: I think it's a problem.

19 SPECIAL MASTER: Okay.

20 MR. COOPER: You have to re-notice.

21 SPECIAL MASTER: Thank you. But what do I do
22 about it?

23 MR. COOPER: Well, you disapprove it, is what
24 you do. You've got to re-notice people in other states.
25 You've got to carve out the money. You have to tell

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1 people what's happening. I just don't -- you can't just
2 ignore it.

3 SPECIAL MASTER: Okay. I'm sorry to be
4 plodding here. But to whom do we have to give notice
5 now?

6 MR. COOPER: Well, if the class includes
7 resellers, you have to now have a notice which says that
8 resellers can claim against this pie.

9 SPECIAL MASTER: Okay. Because the Chunghwa
10 settlement includes payments, potential payments to
11 resellers --

12 MR. COOPER: Right.

13 SPECIAL MASTER: -- whereas this one doesn't.

14 MS. KIRKHAM: Doesn't. And the Chunghwa notice
15 told resellers they would be paid at a later date.

16 SPECIAL MASTER: Okay. So let me see if I get
17 it. You're saying there are two significant differences
18 between the allocation plan in Chunghwa and this
19 allocation plan. One is resellers get money from
20 Chunghwa. They don't here.

21 Number two is there's a different formula for
22 distributing money state by state in Chunghwa than the
23 pro rata plan that is proposed here.

24 MS. KIRKHAM: Yes, yes.

25 SPECIAL MASTER: I got it.

1 Mr. Alioto.

2 MR. ALIOTO: Yes. There's no inconsistency.
3 First of all, with respect to resellers, the notice
4 that's in our brief, the notice is quite clear that
5 because of the relatively small amount of money paid
6 under the Chunghwa settlement, that would be the
7 settlement for the ten million dollars plus the proffer.
8 Because of that small amount, it would not have been
9 practicable to actually allocate money. And the notice
10 recites -- I'll try to find that cite in the brief, but
11 -- it's in our most recent brief. We cite to the notice
12 that says resellers, you may not get money. And that
13 was put in there because of the small amount of the
14 settlement.

15 And so there's never been any expectation or
16 promise that they would get money as part of that
17 Chunghwa settlement.

18 SPECIAL MASTER: But I'm being told there was
19 final approval of the Chunghwa settlement, and in that
20 settlement was a provision for giving money to
21 resellers.

22 MR. ALIOTO: Well, I would have to see that.

23 SPECIAL MASTER: Isn't that a final judgment?

24 MR. ALIOTO: Well, that's -- no, I think what
25 they're saying is in that -- they're referring to orders

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1 that there was a provision to give money to states.

2 There's two issues here. One is resellers.

3 That issue, I submit, is very straightforward. Because
4 of the small amount, we recognized at the time that
5 there might not be money to distribute.

6 SPECIAL MASTER: Well, it may be a small
7 amount, but we have the small issue of a final judgment
8 that says they get money.

9 MR. ALIOTO: I don't believe that's recited in
10 the final judgment, Your Honor. It's been quite a while
11 since I've seen that, and we'll check that. But the
12 notice, the document that actually went to class members
13 said you're not -- you may not get anything. That's
14 quite clear, and that's cited in our brief. Now whether
15 there's some -- some mention to the contrary in the
16 judgment, I just don't know from memory, but I will
17 check that. The notice, the crucial document that was
18 sent to the class member that they read and relied on
19 had that provision.

20 SPECIAL MASTER: Okay. So your -- your
21 position is that any inconsistency with respect to the
22 treatment of resellers or other class members in
23 Chunghwa and this case is cured by the "new
24 comprehensive," in quotes, notice, that you gave in this
25 case, and that notice in effect says oops, actually

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1 you're not getting any money?

2 MR. ALIOTO: Yeah, and I'm not so sure that
3 there is any inconsistency.

4 SPECIAL MASTER: Well, resellers get money,
5 resellers don't get money. That sounds like an
6 inconsistency.

7 MR. ALIOTO: Yeah, but what are they referring
8 to -- I mean, I'm going on arguments that have been
9 made. What are they -- I'm trying to respond to an
10 argument, but I'm not exactly sure what the argument is.
11 The argument is that there was something in the final
12 judgment in the --

13 SPECIAL MASTER: In the -- I am being -- wait.

14 Okay. Mr. Scarpulla.

15 MR. SCARPULLA: Your Honor, there was a final
16 judgment approving the settlement with Chunghwa which
17 provided for a payment to resellers. It's in there.
18 It's final.

19 SPECIAL MASTER: Okay. All right.

20 MR. SCARPULLA: Period. And then there was
21 also a provision in there which provided that the money
22 would be divided certain percentages by state. That's
23 gone too.

24 SPECIAL MASTER: Okay.

25 MR. ALIOTO: All right.

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1 SPECIAL MASTER: Let's be practical here. We
2 don't want a \$10 million tail to wag the \$576 million
3 dog. So this is a problem that I would like to find a
4 way to cure and not have it be a reason to foul up a
5 settlement.

6 MR. SCARPULLA: But that's a big problem, Your
7 Honor, because it's constitutional issues of due
8 process.

9 SPECIAL MASTER: I get it. If it's a problem,
10 it's a problem.

11 MR. ALIOTO: And what that settlement provided
12 for -- and here's -- I think I get the gist of the
13 argument. When we sought approval of that Chunghwa
14 settlement, certain attorneys general appeared. They
15 got the notice, and they got the CAFA notice, and they
16 stood up for their rights.

17 And Washington said we want to go our own way.
18 And Oregon and Illinois said we want to go our own way
19 in the future, but thanks a lot for getting this
20 settlement and we should get this money. We -- and that
21 issue was tee'd up in front of Judge Legge. And Judge
22 Legge ruled yes, they're entitled as AGs to that money,
23 and the judgment and the preliminary approval order
24 recited that. That was a ruling by Judge Legge. Not a
25 contractual arrangement or deal, it was a -- it was a

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1 contested matter and a ruling by the judge.

2 I think where the confusion comes in, Your
3 Honor, is the amount of the settlement that was
4 allocated to Illinois and Oregon was based on a
5 population allocation. That population allocation is
6 set out in the order, and it says Illinois and Oregon
7 are going to get X amount based on this population
8 calculation. It was like setting forth the background
9 of the calculation.

10 What the objectors are saying is that that
11 background of the allocation to Illinois and Oregon,
12 that meant that all those other states had to get money.
13 That's not the case. The listing of all those other
14 states was just for the purpose of showing how we
15 arrived at the allocation figure from Washington and
16 Oregon. No inconsistency. Money is going to be paid to
17 those states. Matter of fact, I just spoke with Blake
18 Harrop (phonetic) the other day, a couple of days ago
19 confirming that with him. That settlement is over, it's
20 done, and those terms are going to be honored as part of
21 this larger package.

22 SPECIAL MASTER: What do you mean they're going
23 to be honored?

24 MR. ALIOTO: There's a provision in the
25 Chunghwa settlement per Judge Legge's ruling that a

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1 certain -- certain percentages of money must be paid to
2 the state of Illinois and the state of Oregon. And
3 those payments will be made because that was part of
4 that settlement approval.

5 SPECIAL MASTER: So you will carve out an
6 exception to the pro rata distribution to take care of
7 Oregon and Illinois?

8 MR. ALIOTO: Precisely.

9 MR. COOPER: And the amount of money that will
10 be distributed pro rata will be the amount of money you
11 think is involved less the amounts that go to those AGs.
12 So all the notice that says this is the amount you're
13 going to share pro rata is incorrect by the amount. It
14 may not be a large amount, but it's incorrect, and
15 there's been nowhere in all the presentations about
16 this, any acknowledgment until we brought it up of the
17 problems with what exists with regard to the commitments
18 made in connection with the Chunghwa settlement.

19 Look at the -- look at the order of
20 preliminarily approving the Chunghwa settlement. That's
21 where the chart of states and percentages is attached.

22 SPECIAL MASTER: What about resellers, Mr.
23 Alioto? What --

24 MR. ALIOTO: There will be -- there's no
25 payment contemplated to the resellers, Your Honor.

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1 SPECIAL MASTER: But how -- if there was a
2 final approval by the district court of a settlement
3 that provided money going to resellers, how do we ignore
4 that?

5 MR. ALIOTO: Well, I'm going to have to check
6 that final judgment, Your Honor.

7 MR. COOPER: Well, the class includes
8 resellers, Your Honor. The settlement class includes
9 resellers.

10 MR. ALIOTO: I will say --

11 SPECIAL MASTER: Did you have -- you're shaking
12 your head. Do you have something of wisdom to add? No?
13 All right.

14 MR. ALIOTO: Keep in mind that this is --

15 SPECIAL MASTER: Look, this is a small issue in
16 magnitude, but it's troubling, and I don't have any of
17 the -- I mean, they're all in the record. But nobody
18 has really thoroughly briefed this. Nobody has given me
19 a stack of material I should look at like the language
20 of the Chunghwa settlement, the -- the orders approving
21 it and so on. And there's not a lot of time between now
22 and January 15.

23 MR. COOPER: We'll pull them together and send
24 them to you, Your Honor. We'll send the list that we're
25 going to send to Mr. Alioto in advance of sending it to

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1 you in case he wants to add something to the list.

2 MS. MOORE: Just a point that I believe now
3 that everyone can make a claim, there's no place on the
4 website to actually make a claim for resellers.

5 SPECIAL MASTER: Yeah, I mean, resellers have
6 been excluded from this settlement. I understand.

7 Yes, Mr. Bonsignore?

8 MR. BONSIGNORE: Very briefly Your Honor, you
9 might find 55 F.3d 768, 797. It's a third circuit case
10 cert. denied, 516 U.S. 824 of interest and when you're
11 evaluating this specific issue.

12 SPECIAL MASTER: Give me the name of the case.

13 MR. BONSIGNORE: In re General Motors Corp
14 Pickup Truck Fuel Tank Products Liability Litigation.

15 SPECIAL MASTER: And is that cited in your
16 brief somewhere?

17 MR. BONSIGNORE: Yes.

18 SPECIAL MASTER: Thank you.

19 Sir.

20 MR. ST. JOHN: This strikes me as someone
21 representing a client who is potentially impacted by
22 this as an unforced error by class counsel. And I agree
23 with Your Honor that it shouldn't wag the dog. I think
24 the solution is that the party that's responsible for
25 the unforced error should pay for it. Deduct the cost

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1 from class counsel's fees.

2 SPECIAL MASTER: Deduct what costs?

3 MR. ST. JOHN: Whatever additional notice and
4 whatever it costs to fix payments for resellers and
5 payments to the states in question. Mr. Alioto made the
6 mistake. There's a term for that, but Mr. Alioto should
7 be responsible for fixing it. And you can fix it
8 without -- and resolve these problems.

9 MR. ALIOTO: We'll determine that when Your
10 Honor has the full records and you can make that
11 determination.

12 SPECIAL MASTER: All right. Before we leave,
13 I'll set up an additional briefing schedule on this
14 issue.

15 Now, that brings us to Mr. Varanini. And you
16 want to extend the claim deadline?

17 MR. VARANINI: Yes. But --

18 SPECIAL MASTER: And I am told by your
19 colleagues on the other side that doing so will create
20 all sorts of claims of disparate treatment. California
21 residents will be claimed to be given a longer time to
22 make claims than other people and so on. Before you get
23 into your argument, let me ask you: What happens if the
24 court says no? What happens down in the California
25 state court if the court says no, we're not going to

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1 extend the deadline? Sorry, deadline is a deadline.

2 MR. VARANINI: Well then --

3 SPECIAL MASTER: What do you do practically?

4 MR. VARANINI: Practically that's a difficult
5 question because we have to figure out what to tell
6 California and actual people.

7 SPECIAL MASTER: They now have settled or --
8 their parens patriae --

9 MR. VARANINI: Yes.

10 SPECIAL MASTER: -- their claims that you
11 brought on their behalf. Where do they make claims?

12 MR. VARANINI: Well, they can't. We didn't --
13 this is set out in our briefing, so if Your Honor
14 doesn't mind my summarizing the briefing, that's fine,
15 but I would encourage Your Honor to look at it.

16 When we settled these cases, we did so based on
17 having had discussions with the indirect purchaser
18 plaintiffs trying to fix a situation that occurred
19 within early settlement. And as part of that, the
20 amounts that we negotiated for were done with the view
21 that the indirect purchaser plaintiffs were out there.
22 They were in federal court. They were ahead of us going
23 to trial.

24 Traditionally, you know, private plaintiffs are
25 good at getting monetary relief, and we tend to focus on

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1 sort of the residue that can help those folks who don't
2 file claims as far as injunctive relief. And so we
3 agreed if we can persuade defendants to insert language
4 that would make it crystal clear, even though this has
5 always been our position, that we were not out there to
6 supplant or replace class claims.

7 There's a price for that. Because we can't
8 give defendants exclusivity. We can't say okay, we can
9 give you a release which would eliminate Mr. Alioto's
10 claim 'cause we don't do that. They're not going to pay
11 us a lot of money because Mr. Alioto is the one who can
12 come in there and say I've got these big claims.
13 They're worth a lot of money. This is -- this is what I
14 bring to the table.

15 So we didn't negotiate for the kinds of sums of
16 money that would allow us to run a direct recovery
17 program where people could make claims against our pot,
18 even leaving aside the other claims that we have in our
19 case, because we do have other claims aside from natural
20 people. So that's what we relied on.

21 Traditionally the way we work is we come in at
22 the allocation stage, like we have here. Usually this
23 is behind the scenes because we have joint settlements.
24 Here it's not behind the scenes, so this makes it
25 different. But we come in, and we give advice on

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1 allocation. We say okay, we as AGs really care about
2 natural people. Not to say private plaintiffs don't,
3 but we really care about them. They're our citizens,
4 they're going to complain to us if there's a problem.
5 They're not going to go complain to you.

6 SPECIAL MASTER: Might even vote you out of
7 office.

8 MR. VARANINI: Right. They might vote her out
9 of office or hypothetically they might decide not to
10 promote her to the next office that's coming up. So we
11 take --

12 MR. GOLDBERG: We have that on the record.

13 MR. VARANINI: I'm aware of that. I hope the
14 general looks favorably on me for having said it. But
15 be that as it may, we're the ones who are going to get
16 the criticism. So when we send out a notice that would
17 say -- and we can't because we don't agree with it --
18 that would say California natural people, you can't file
19 claims. You're going to have to live with what we can
20 give you on cy pres, meaning sort of this indirect
21 relief where we give money for the indirect benefit of
22 the class. Just making sure there's a complete record.
23 I know Your Honor is very well aware of this. We're the
24 ones who are going to get criticized. And this is -- we
25 negotiate these settlements in reliance on this

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1 understanding that we tried to implement to move
2 forward.

3 SPECIAL MASTER: But let me just --

4 MR. VARANINI: Sure.

5 SPECIAL MASTER: All the natural people in
6 California whom you represent have already gotten the
7 federal notices.

8 MR. VARANINI: Correct.

9 SPECIAL MASTER: They've already had an
10 opportunity up until December 7 to submit claims.
11 You're kind of saying they should -- because we have a
12 parens patriae claim on their behalf, they should get a
13 second whack at the Apple?

14 MR. VARANINI: Not exactly, Your Honor. We're
15 saying one of two things here. Okay? This shades into
16 the other issues. So we believe that for allocation
17 purposes, for allocation purposes from what we can see
18 from the face of what was done, because that's all we
19 have -- we don't have access to the notice and claims
20 data -- so what we can see from the face of things is we
21 believe there are deficiencies where natural people
22 didn't get their fair shot.

23 In the context of allocation there is notice.
24 Notice as you've heard these gentlemen and lady talking
25 about have to do with reach, right? How many eyeballs

1 literally saw the advertisement. That's important for
2 opt-out purposes. It's important for due process
3 purposes. But that's different than generating claims
4 to make sure that, for example, natural people had their
5 fair shot. Based on the face of what we're seeing, we
6 don't believe for reasons that we've already said in our
7 brief that natural people had their fair shot.

8 Now we asked for notice and claims data to give
9 a more refined -- more refined analysis for the benefit
10 of Your Honor. And that was ultimately denied, as Your
11 Honor is well aware. And it's now pending in front of
12 Your Honor. So absent that, all we have to go on is
13 what's on the face of it, and we believe that's
14 insufficient.

15 So how this plays in the state court because
16 Your Honor asked. This is in the papers, so I apologize
17 for repeating it. But how it plays in state court is we
18 can't put in a notice that we think California natural
19 people already had their opportunity to claim and that's
20 it because we don't believe it. So -- but on the other
21 hand, the claim's deadline has closed, so do we tell
22 people: Well, go ahead and file a claim and maybe it
23 will be honored and maybe it won't? Do I tell people
24 well, the special master has recommended against it, so
25 you could file it, but we plan to make an objection to

1 the court?

2 It puts us in a really sticky situation. So
3 one of -- we proposed one of two paths. Either -- you
4 know, either reform the claims process as part of the
5 allocation plan, which Mr. Alioto has referred to he may
6 be open to, or extend the claims deadline so that we can
7 tell California natural persons they have an opportunity
8 to claim.

9 Now one final point. We have said that Your
10 Honor, even on that point, extending the claims
11 deadline, that Your Honor has a choice. You can do that
12 as to California natural people only because we and we
13 alone of all the groups of claimants have this parens
14 claim that's out there for them. And that is unique,
15 and that is something that the court can use to make a
16 difference. And we've given Your Honor cases and
17 argument on that. Or Your Honor can extend it as to
18 everybody.

19 And on that point, Mr. Alioto has expressed his
20 fears about corporations being unfairly advantaged as
21 part of that. We responded to that. We believe there's
22 no evidence to back that up. But more importantly, we
23 believe there's a couple of constructive solutions that
24 Your Honor can recommend to deal with that if Your Honor
25 feels it's more appropriate to extend the claims

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1 deadline as to everyone.

2 SPECIAL MASTER: So Mr. Alioto, why isn't an
3 easy solution to do what Mr. Varanini says? California
4 natural persons are special because they're the only
5 ones for whom a parens claim was brought. They need to
6 be given a fair opportunity to file claims under the
7 parens lawsuit, extend the deadline for California
8 natural people. And if anybody -- if anybody objects to
9 it as being improper disparate treatment, we say sorry,
10 they're the only ones who have a parens claim. Done,
11 easy, fix. Right? Wrong?

12 MR. ALIOTO: Mr. Paul Novak has been working
13 with the AG. He'll respond.

14 MR. NOVAK: Over here. Paul Novak of the
15 Milberg firm.

16 Let me first identify a couple of points in Mr.
17 Varanini's presentation and his papers that I think we
18 agree with. The first is I think he is accurate in
19 distinguishing the posture of California natural
20 claimants vis-à-vis other class claimants in that they
21 are the only ones with the companion parens patriae suit
22 that has also been pending and litigated, albeit in the
23 separate form at the same time. We recognize that
24 distinction.

25 He also is accurate that the district court

1 possesses equitable discretion to extend claim deadlines
2 generally. We don't contest that. We don't believe it
3 is necessary given the adequacy in our view of the
4 notice that has been implemented to California claimants
5 that a -- that a deadline extension is necessary, or
6 that an extension of that deadline would be necessary
7 for purposes of issuing final approval of our
8 settlement. But we recognize the sensitivities that are
9 associated with the parens case pending at the same
10 time. And if that's the solution that the court
11 imposes, so be it based upon that distinguished posture.

12 SPECIAL MASTER: But what's the downside?

13 MR. NOVAK: Our primary concern is the exposure
14 to the types of objections that might come from other --
15 from other corners or other angles. But aside from --
16 that's our primary concern, and -- and if the court
17 doesn't find that concern to be one that's particularly
18 persuasive, I don't -- I don't think we otherwise have
19 an issue with it.

20 SPECIAL MASTER: Well, I mean, I was contacted
21 by an enterprising aggregator directly on the afternoon
22 of December 6th asking me to do something to facilitate
23 his ability to file claims. And -- you know, so I'm
24 aware that there is that -- you know, there is that
25 industry out there which -- but...

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1 I don't know. I'm feeling as if I'm not
2 hearing any serious downside to extending the deadline
3 -- recommending to Judge Tigar that he extend the
4 deadline for California natural persons except that you
5 might get a lot of objections from people that, you
6 know, I think we could deal with. I don't want to do
7 anything that has unfortunate consequences, you know,
8 unforeseen consequences, so -- but I'm not hearing any
9 except the objections that might come in.

10 MR. NOVAK: I -- I think that's probably an
11 accurate characterization.

12 SPECIAL MASTER: Okay. Mr. Varanini, as long
13 as you're on a roll here, what -- you had some other
14 issues. You raised the issue of cy pres. You said
15 there's no cy pres provision in the -- in this
16 settlement.

17 MR. VARANINI: Correct.

18 SPECIAL MASTER: The contemplation is
19 everything would be distributed pro rata, but how does
20 that disadvantage your California natural people?

21 MR. VARANINI: Well, there are two parts to
22 that. One is we don't know if it's -- we don't have
23 anything in the record that says that it's all going to
24 be distributed. We have statements being made in
25 briefing, but we don't actually have the claims data

1 with the projection, which in other cases that's been
2 provided.

3 But let's assume for the sake of argument,
4 because I'm not trying to evade the question, that
5 that's what is going to happen; that at the end of the
6 day, leaving aside this issue of giving people treble
7 payment, let's say based on single damages just for the
8 sake of the argument for a moment. So that's the idea
9 that people at the maximum, if they filed the claim,
10 they're only going to get back their single damages.

11 And let's assume that exhausts the fund
12 entirely. Well, if it's single damages, that's okay
13 because there is a preference for direct distribution.
14 So if you have a fund, and assuming Your Honor is
15 otherwise okay with the allocation plan, and, you know,
16 the money that was set aside for people to file claims,
17 both people and corporations, you give them single
18 damages, the money is completely run out, there isn't a
19 cent left -- and this includes issues with people having
20 moved; you can't give them checks. This includes trying
21 to track people down and you don't succeed. Let's just
22 assume for the sake of argument there isn't even that
23 ghost of a residue left.

24 Agreed -- I would agree based on federal law
25 without respect to California law, I would agree cy pres

1 is not an issue. Okay? But then -- and again, we're
2 only looking at the face of the notice plan and the
3 allocation plan because we don't have the data. Data
4 would allow us to give a more refined perspective than
5 we can give. Here we're talking treble damages. Okay?
6 So this is the idea that corporations and individuals
7 not only should get the full value of their claims, but
8 that that should be trebled.

9 And so the question that's in front of Your
10 Honor, again in the absence of additional data, is it
11 appropriate for those folks to get three times the value
12 of their claim or is that a windfall. And if it's a
13 windfall, should that extra money go cy pres or should
14 there be at least notice to try to find additional
15 claimants first.

16 We've proposed both as potential alternatives
17 for the court. So we said well, we think based on other
18 cases there's sort of obvious additional notice that
19 could be done to gin up claims. And because we don't
20 have the data, we don't know whether those obvious
21 additional notice that was done in other cases could be
22 done here or not.

23 All we can do is point to the other cases, and
24 then Your Honor has to make whatever decision Your Honor
25 feels is appropriate. Or we said -- let's say it did

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1 not turn out to be the case, that the indirect purchaser
2 plaintiffs come back and say look, this really would
3 cost us way too much money, and it's just not going to
4 gin up claims, okay? Well, then we said well, wait a
5 minute, then if there is this windfall, why not leave
6 some money left over for cy pres after everybody gets
7 the value of their claims in full. Then that way we
8 know everyone in the classes of the different state
9 specific damage classes gets some sort of benefit. It
10 may be indirect, but they're going to get a benefit.

11 And as long as everyone follows the proper
12 protocol that's been set out in Ninth Circuit cases, a
13 protocol we're very experienced with, there shouldn't be
14 the kinds of issues that have arisen in other cases such
15 as Kellogg, the Ninth Circuit case. So that's why we
16 thought there's this sort of interplay between claims
17 and cy pres.

18 SPECIAL MASTER: Okay.

19 MR. NOVAK: May I respond to that? Again, Mr.
20 Novak on behalf of the IPPs.

21 Let me make a couple observations with respect
22 to the plan of allocation, its relationship to notice,
23 and the issue of single versus treble damages.

24 First, as has already been discussed, the
25 adequacy of the notice plan has already been touched

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1 upon. I think even the California attorney general
2 recognizes that the notice plan as implemented meets the
3 due process requirements and Rule 23 requirements.
4 Exhibit C of his declaration, the claim stimulation
5 document that references the notice plan, states, quote:

6 "Due process notice programs must adhere
7 to the requirements of Rule 23 claim
8 stimulation programs. Unshackled from these
9 requirements allow us to think outside the
10 box."

11 So what Mr. Varanini is discussing is something
12 that exceeds the requirements that class counsel has for
13 purposes of creating and submitting and implementing the
14 notice plan that then informs the claims administration
15 process.

16 As it relates to claims administration,
17 although we don't have final data, and in the event that
18 the court extends the deadline for the submission of
19 claims, won't have the deadline -- won't have the data
20 for an even greater period of time, but what we think is
21 going to happen with -- based simply upon the claims
22 that have been submitted to date is that claimants are
23 going to receive much closer to single damages than they
24 will to treble damages.

25 And we note that there are a number of other

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1 cases where treble damages as the cap was acceptable to
2 the court for purposes of issuing final approval, but
3 also even to the California attorney general for
4 purposes of obtaining final approval on some of those
5 settlements.

6 SPECIAL MASTER: In LCD there was a treble
7 damage cap.

8 MR. NOVAK: LCD had a treble damage cap.

9 SPECIAL MASTER: Did the California attorney
10 general complain about that there?

11 MR. VARANINI: No, we did not.

12 SPECIAL MASTER: Of course, there was more
13 money.

14 MR. VARANINI: Well, if -- if I may, aside from
15 the issue of whether there was more money or not, and we
16 were working with other states and so had to compromise,
17 there were two key distinguishing factors about LCDs, at
18 least we thought. Now Your Honor may disagree with
19 that. One of those -- one of the distinguishing factors
20 was there was a more extensive notice campaign done for
21 purposes of ginning up claims than is being done here.

22 SPECIAL MASTER: Right.

23 MR. VARANINI: The second distinguishing
24 factors are the amount of the fees claims were lower, so
25 there was more money in the pot.

1 SPECIAL MASTER: Not a lot.

2 MR. VARANINI: Not a lot. And there was -- in
3 LCDs there was a reversionary -- there was -- sorry,
4 reversionary is the wrong term. There was a clause that
5 said if there was any money left over, it would go to
6 our cy pres. So there were distinguishing features of
7 LCDs that we could say well, maybe -- look, in a perfect
8 world -- you get the point.

9 SPECIAL MASTER: Fair enough. Go ahead.

10 (Electronic interruption.)

11 MR. NOVAK: The other point I wanted to make,
12 and this is with respect to at what point does a court
13 make a determination. We've given enough money to
14 claimants. Let's proceed to distribute the remaining
15 money on a cy pres basis.

16 I brought to Mr. Varanini's attention this
17 morning when we were discussing these issues that some
18 of the other circuits -- the Ninth Circuit hasn't spoken
19 on this issue or, for that matter, any court in the
20 Ninth Circuit that I'm aware of. Other circuits have
21 addressed the issue of at what point do you go to cy
22 pres.

23 And in the Second Circuit, specifically in the
24 Masters versus Wilhelmina modelling case, it's 473 F.3d
25 423. The second circuit actually found it to be an

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1 abuse of discretion to consider cy pres distribution
2 before making a treble damage allocation to the
3 claimants.

4 And I think a couple of other courts have come
5 to a similar conclusion, although not probably as
6 clearly as the Masters decision. One is a Bank America
7 decision 775 F.3d 1060. I'm not going to suggest that
8 it went as far as Masters versus Wilhelmina, but it
9 cited language from that decision on the cy pres issue
10 and the treble damages issue approvingly. That's from
11 the Eighth Circuit. There's also an in re publication
12 paper --

13 SPECIAL MASTER: You know what, I'm going to
14 ask you to do the same.

15 MR. NOVAK: I'll submit --

16 SPECIAL MASTER: If you could just submit a
17 letter with any citations you wanted.

18 MR. NOVAK: Okay. Particularly that one
19 because I've only got a Lexis cite for it, and you'll
20 need it in Westlaw.

21 SPECIAL MASTER: All right.

22 MR. NOVAK: So other courts that have looked at
23 that issue have explicitly found that it's okay to go up
24 to a full treble damage, and in some instances have said
25 it was an abuse of discretion not to go first to treble

1 damages. The Lupron marketing decision that Mr.
2 Varanini pointed to actually had a 1.67 multiple of
3 damages for claimants as -- as the cut off in that
4 settlement, and it was a cut off that had been
5 negotiated.

6 What happened in that case is plaintiffs
7 originally had a 100 percent allocation plan. You had
8 some objectors come in and say hey, we should receive
9 more than 100 percent before cy pres distributions are
10 made. And so a negotiation to revise the settlement to
11 increase it to 1.67 times was made.

12 And then at that point, the court said because
13 the objectors settled with that revision to the
14 settlement and then came back later and argued about it,
15 and the court said you've -- you've waived your
16 arguments with respect to getting even more than 1.67
17 times your damages because you obtained consideration
18 for it when you revised the settlement agreement.

19 So basically I think the case law certainly
20 allows for distributions to go up to treble damages, if
21 not require it, particularly in an instance where as
22 here it's not contested that the notice plan meets due
23 process and Rule 23 requirements for being the best
24 practicable notice. And for those reasons we don't
25 think that the modifications to the allocation plan are

1 appropriate.

2 And let me make one final observation. And
3 that is that this whole idea that we need to go until
4 the very end of the claims distribution process when all
5 of this data has been submitted and make the
6 determination based on that, if we continue to extend
7 the claims deadline, it has the problem of continually
8 forestalling the distribution of money to claimants,
9 which given the amount of time between the beginning of
10 the class period -- oh, that actually reminds me of one
11 other thing.

12 And that is there -- if you had actually
13 obtained these damages back when these purchases were
14 initially made at the beginning of the damage period,
15 and didn't have the time value of that money for what's
16 near 20 years, that makes treble damages all the more
17 appropriate, even though I don't think any claimants are
18 going to be getting it based on the claims data that's
19 been submitted.

20 SPECIAL MASTER: You're worried that people may
21 have been eight years old when the claim period started,
22 but they may be 80 before they get any money.

23 Mr. Varanini, I'm worried about your practical
24 problem here. Let's say I recommend next week that the
25 claim deadline be extended. Nothing is going to happen

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1 on that until March 15 unless I ask Judge Tigar to rule
2 separately on that issue quickly.

3 MR. VARANINI: Well, there are -- sorry.

4 SPECIAL MASTER: And you've got a January 27
5 hearing.

6 MR. VARANINI: Yes.

7 SPECIAL MASTER: And you've got to give notice.

8 MR. VARANINI: Yes. There are three responses
9 to that. First of all, if nothing else, we could at
10 least say that Your Honor has in your report and
11 recommendation recommended the extension of claims
12 deadline. That would be positive encouragement that we
13 could point out to people to submit claims, even if
14 ultimately the court retains the discretion to say no,
15 and we would have to say something about that to be
16 frank.

17 The second point is that as Your Honor
18 indicated, Your Honor could recommend to Judge Tigar to
19 rule quickly on this one issue so we would have an
20 answer before the hearing.

21 The third possibility is that we do have
22 pursuant to the proposal we had made to extend the
23 claims deadline, we've left some water in there. So if
24 something happened, we could -- we could, for example,
25 move the hearing back by a week or two and still have

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1 more than enough time for people to get notice and still
2 not leave things out of sync with the final approval
3 hearing.

4 At some point we do recognize that if things
5 get pushed back far enough, that's on us. So we want to
6 have the preliminary approval hearing very soon, and we
7 prefer to have it on the date that we set, but we did
8 leave a little bit of water in our proposal to move it
9 forward to June 30th so that we would have the ability
10 to deal with these kinds of circumstances.

11 SPECIAL MASTER: Okay. So I've covered my
12 agenda. Is there anyone who has anything remaining that
13 they think should be brought to my attention?

14 Mr. Cooper.

15 MR. COOPER: This doesn't actually have to do
16 with any of the substance we've been talking about. One
17 of my questions relates to the protocols for getting
18 notices and distributions. You posted yesterday an
19 email exchange that apparently you had with Mr. Alioto,
20 and I'm not certain with Mr. Scarpulla or not, which set
21 out the issues you wanted to talk about today. The
22 original emails and your email responding were not sent
23 to all counsel, and so --

24 SPECIAL MASTER: My bad.

25 MR. COOPER: Well, apparently Mr. Alioto's --

1 SPECIAL MASTER: I apologize.

2 MR. COOPER: -- directly going to you initially
3 was not sent over yesterday. So my question is what are
4 the protocols so we can all be getting timely notice of
5 what's going on?

6 SPECIAL MASTER: Okay. The Order of Reference
7 allows me to have ex parte conversations with counsel on
8 procedural issues. I keep it -- try to keep it to a
9 minimum. At the very beginning when we were getting
10 organized, Mr. Alioto and I talked quite a bit as we've
11 gotten into this. I've tried to keep it more formal and
12 more transparent.

13 So I think that from now on any email exchange
14 with me, either email or letter exchange with me should
15 be posted on Case Anywhere on the JAMS website, and I
16 failed to do that. I was actually on vacation, and
17 that's just my mistake.

18 And -- I mean I think I sent it to the people I
19 thought would have the most interest in it, Mr. Varanini
20 and Mr. Scarpulla and Mr. Alioto. So I apologize to
21 everyone else. But I think that's the way we should do
22 it. Any communications with me should be -- should be
23 posted on the Case Anywhere.

24 You know, I suppose something could come up
25 that would be incredibly urgent, a procedural matter

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1 that someone would just have to call me on the phone. I
2 would really like to avoid that, but, you know, if
3 circumstances demand it, my Order of Reference permits
4 it.

5 MR. COOPER: I was aware of what it says in the
6 Order of Reference about ex parte communications,
7 although I do believe the word was "scheduling" and not
8 "procedural" but I'm not quibbling -- I'm not quibbling
9 about that. But this particular email seemed not to be
10 in that category where you've talked substantively about
11 what's going to happen, and that's why I'm bringing it
12 up, so....

13 SPECIAL MASTER: I've already apologized. I
14 don't know what more I can do.

15 MR. COOPER: I'm not trying to beat it up
16 anymore.

17 My second question was during the discussion
18 you were having with regard to notice and claims in the
19 discussions, particularly about the claims rates and
20 what the experience has been, you made a statement, and
21 I wrote the words down, and I believe it's a question to
22 Mr. Alioto with regard to the information about the
23 claims experiences. And you said: Would that be the
24 end of the, quote, "final" -- or when, quote, "the final
25 papers are filed."

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1 And that confused me because I thought that the
2 only papers that are yet to be filed is your report and
3 objections and responses to that, and I didn't know what
4 you were referring to by final papers.

5 SPECIAL MASTER: I don't either. But I take it
6 what would normally happen is that there'd be an ongoing
7 reporting to the court of the progress of the claim
8 process to allow the court to confirm that the claim
9 process was being carried out the way it was supposed to
10 be carried out. So...

11 MR. COOPER: Well, I just wasn't certain if
12 there was some briefing schedule that I wasn't aware of.

13 SPECIAL MASTER: No, no.

14 All right. Anything else? I have a couple of
15 things to say at the end, but --

16 MR. ALIOTO: Two points, Your Honor.

17 SPECIAL MASTER: Mr. St. John.

18 MR. ST. JOHN: Your Honor, do you want any
19 argument on the issues raised in IPP counsel's surreply?

20 SPECIAL MASTER: Well, what are you referring
21 to?

22 MR. ST. JOHN: The judicial estoppel vis-à-vis
23 Chunghwa and the Philips and Samsung settlements.

24 SPECIAL MASTER: The point on Philips and
25 Samsung I think that you made was they're so big there

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1 must be something out of whack.

2 MR. ST. JOHN: Correct, Your Honor.

3 SPECIAL MASTER: The others must be too small.

4 Words to that effect.

5 MR. ST. JOHN: More than the size is
6 attributable to factors other than class counsel's
7 efforts such that they're not properly -- that the
8 entirety of those settlements are not properly
9 includable in the fee base.

10 SPECIAL MASTER: I think I have your arguments
11 on that. I mean -- I mean I may not totally remember
12 them now, but I remember reading them and understanding
13 them when I read them.

14 MR. ST. JOHN: Fair enough, Your Honor.

15 SPECIAL MASTER: Did I see other hands? Mr. --

16 MR. SCARPULLA: I just have a quick question,
17 Your Honor. To the extent that Your Honor is going to
18 have a hearing on fees, will you let us know that or if
19 you're not --

20 SPECIAL MASTER: No, it will be held secretly.

21 No.

22 You mean a hearing on the allocation of fees,
23 or the hearing on the total amount of fees?

24 MR. SCARPULLA: Well --

25 SPECIAL MASTER: Oh, I see what you're

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1 saying -- no. What I said in that email was that I
2 wanted to focus this hearing on the issues that we've
3 already talked about.

4 MR. SCARPULLA: Correct.

5 SPECIAL MASTER: I am not excluding -- you may
6 say anything you want to about fees now. I mean I think
7 I understand all the arguments you've made. I have them
8 in mind, and we'll consider them. If there's anything
9 more anybody wants to say about the fee request or the
10 expense request, you may do so. If you were sandbagged
11 and thought that wasn't going to come up today, you
12 know, I'm -- I'm -- I don't know what to say. I don't
13 have time to set another oral argument. But you're free
14 to say anything you want now.

15 MR. SCARPULLA: Well, I think it's all in the
16 briefs, and I wasn't -- but I wasn't sure whether Your
17 Honor was going to have that as a separate hearing from
18 this one.

19 SPECIAL MASTER: No. I think what I said was I
20 think I have enough in the briefing and in the
21 declarations from the various attorneys and so on and so
22 on to make hopefully an intelligent ruling on that.

23 MR. SCARPULLA: Right.

24 SPECIAL MASTER: Sir.

25 MR. ST. JOHN: Your Honor, I apologize. I do

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1 want to briefly address, if now is the time, arguments
2 made in surreply about Chunghwa and judicial estoppel.

3 SPECIAL MASTER: Sure.

4 MR. ST. JOHN: Class counsel is playing fast
5 and loose with the idea that small -- small settlement,
6 their words, was invaluable and an icebreaker. And
7 there's no dispute that those words were represented to
8 the court, and there's still no dispute that Chunghwa's
9 assistance was invaluable. That's at page 13 of the
10 surreply.

11 What they try to do is limit that value in the
12 early stage of litigation. But class counsel disposed
13 of the class claims for again a small settlement and
14 made those representations, and the fact that it causes
15 litigation regrets, that's precisely what judicial
16 estoppel targets.

17 Class counsel argues or they try to minimize
18 the value of the Chunghwa settlement by emphasizing that
19 DOJ only prosecuted one corporate defendant. I don't
20 think that's particularly uncommon. The DOJ has limited
21 resources. They prosecute a small number of defendants
22 to bust the settlement -- or bust the conspiracy and
23 then leave the rest to private litigants. That's
24 precisely what DOJ did here.

25 SPECIAL MASTER: What is -- your point about

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1 the Chunghwa settlement is what?

2 MR. ST. JOHN: The Chunghwa settlement created
3 a lot of value beyond its \$10 million.

4 SPECIAL MASTER: Okay.

5 MR. ST. JOHN: And that value is not really
6 attributable to class counsel.

7 SPECIAL MASTER: So we should reduce the fee
8 request to reflect that?

9 MR. ST. JOHN: Correct, Your Honor.

10 SPECIAL MASTER: Okay.

11 MR. ST. JOHN: It's the first stage of the
12 rocket.

13 SPECIAL MASTER: Okay.

14 MR. ALIOTO: Two final points, Your Honor, and
15 I'll be very brief.

16 One, there was a statement earlier about
17 further notice to an additional group. There's nothing
18 in the papers about this. I want to just make sure this
19 is focused up.

20 After the formal notice program, our claim
21 administrator was able to get an email list of claimants
22 in the DRAM case, people who had actually made claims in
23 the DRAM case. And our claims administrator arranged
24 for direct email notice to be sent to those claimants.
25 It was a supplement to the notice. It wasn't something

1 we did because we were having a problem or having
2 trouble. We did it as a supplement to the notice to
3 spur claims. And you can imagine that was effective
4 because these are people who had claimed before, and
5 they were -- they would be motivated to claim again.

6 The other argument I want to make and just a
7 sentence or two is we have made in our papers a standing
8 argument with respect to Mr. Scarpulla and Cooper.
9 There's nothing been said about that in these
10 proceedings. We have no intention of waiving that. We
11 think it's a very important issue that counsel should
12 not be able to come in and make all kinds of claims in
13 settlement approval hearings.

14 They certainly have the right to do that under
15 Rule 23, but the crucial point is you have to have a
16 client. You can't just come in off the street or on a
17 volunteer basis or on an intermeddler basis and make
18 these arguments because these have consequences for us.

19 We're going to be briefing these questions. We
20 may have appeals. It's a very time-consuming, expensive
21 process, and you have to meet that threshold requirement
22 of representing a client. The cases are clear on that.
23 And the cases cited by the objectors do not provide any
24 support for these objections on behalf of indirect
25 purchasers. There's absolutely no basis for doing so.

1 SPECIAL MASTER: Okay.

2 MR. ALIOTO: Thank you.

3 SPECIAL MASTER: Glad you brought that up. Mr.
4 -- just start with Mr. Cooper because you're closest.

5 As I understand the papers, you and your firm
6 currently represent a named or formerly named class
7 representative, correct?

8 MR. COOPER: That is correct, Your Honor, but I
9 believe in addition we are counsel of record for the
10 entire class.

11 SPECIAL MASTER: I know. One question at a
12 time. Okay? So you actually may represent a named
13 member of the class?

14 MR. COOPER: We do.

15 SPECIAL MASTER: Okay. Mr. Scarpulla, you did
16 represent a named class representative when you were
17 with the Zelle firm. What is your status now?

18 MR. SCARPULLA: As part of my agreement leaving
19 Zelle, I was made a -- another lawyer of record for
20 those -- for that client. However, I was told by Zelle
21 that the client does not -- does not approve of my
22 objections.

23 SPECIAL MASTER: Okay. So -- but officially
24 you are still counsel of record for a client in this
25 case?

1 MR. SCARPULLA: That is correct.

2 SPECIAL MASTER: Okay. But in bringing these
3 objections that you both have made, you are not bringing
4 them on behalf of your clients, you are bringing them in
5 your capacity as class counsel in furtherance of your
6 fiduciary duties, correct?

7 MR. SCARPULLA: I think Mr. Cooper is bringing
8 it on behalf of his clients.

9 MR. COOPER: No, I think that's a fair
10 statement from me.

11 MS. CAPURRO: That's not what their papers said
12 when they filed their objection.

13 SPECIAL MASTER: Well, their papers --

14 MS. CAPURRO: None of their papers have said
15 that today.

16 SPECIAL MASTER: No, none of their papers name
17 a client on whose behalf they're bringing the objection.
18 As I understand it, they are bringing it in their
19 capacity as class counsel, not on behalf of a client.
20 And that is your standing.

21 MR. ALIOTO: We would just ask you to look at
22 the authorities on that, Your Honor. We think it's an
23 important point --

24 SPECIAL MASTER: Okay.

25 MR. ALIOTO: -- and that we'd like you to

1 consider.

2 SPECIAL MASTER: Ms. Capurro.

3 MS. CAPURRO: If I may just briefly, I have
4 look extensively at the law on this, and I can find
5 absolutely no case that permits counsel in a case who
6 are not court appointed class counsel. The cases that
7 they cite in their brief -- and they're not court
8 appointed class counsel to bring an objection to a class
9 action settlement and oppose the position of the court
10 appointed class counsel.

11 SPECIAL MASTER: Why are they not court
12 appointed class counsel the same as all the other
13 lawyers in the --

14 MS. CAPURRO: Mr. Alioto was the only court
15 appointed class counsel. All of the case law that they
16 cite in their brief, those cases when they refer to
17 class counsel, they refer to the court appointed class
18 counsel. If you have a situation where every -- every
19 lawyer in an MDL case, which is potentially hundreds of
20 lawyers, is able to speak on behalf of the entire class,
21 I mean if you take that to its logical conclusion, how
22 do you run the case?

23 I mean Mr. Alioto would be saying one thing,
24 and they can pipe up and say something else. How do the
25 defendants know who to deal with? How does the court

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1 know who to deal with? What's the point of even having
2 an order appointing lead counsel if they're able to do
3 that?

4 SPECIAL MASTER: Well --

5 MS. CAPURRO: And this is not a procedural
6 issue, Your Honor, this is jurisdictional. And the fact
7 that they have filed this motion to be appointed as
8 co-lead counsel actually shows that they recognize they
9 have a standing problem. That's -- they're trying to
10 bootstrap themselves in here to get the court's nod to
11 give them the voice, you know, to be able to speak on
12 behalf of these objecting plaintiffs who they've never
13 identified.

14 SPECIAL MASTER: Well, you know, I'm -- I'm
15 cognizant also the court has an independent fiduciary
16 duty to protect the interest of the class. And if
17 information is brought to the court from any source, I
18 sort of think the court has an obligation to consider
19 it. But I -- I need to look at the authorities you've
20 cited with care.

21 MS. CAPURRO: I submit there is no law, and
22 they have cited to none, and it is their burden to show
23 standing. They have not cited to one case --

24 SPECIAL MASTER: Okay.

25 MS. CAPURRO: -- that gives them standing.

1 SPECIAL MASTER: I get it.

2 Is there -- Ms. Kirkham. You have your hand
3 up. Ms. Kirkham.

4 MS. KIRKHAM: Okay. I know I'm pointing out
5 the obvious, but if there was one lead counsel and all
6 other counsel are silenced by that appointment, and that
7 lead counsel recommends a settlement --

8 SPECIAL MASTER: Who is going to object.

9 MS. KIRKHAM: -- you have an issue there.

10 SPECIAL MASTER: Okay. Mr. Bonsignore, I saw
11 some activity down there.

12 MR. BONSIGNORE: Yes, Your Honor, very briefly
13 I represent six plaintiffs, two of which were named
14 plaintiffs in the settlement class, and we joined and
15 adopted their arguments in my paper. I do agree that
16 they do have separate standing, but in the event --
17 thank you.

18 SPECIAL MASTER: Good.

19 Mr. St. John.

20 MR. ST. JOHN: Your Honor, the argument you
21 just made is precisely the holding of Zucker v
22 Occidental Petroleum Corporation. I don't have the
23 cite, but it was Case No. 9756270 decided by the Ninth
24 Circuit on October 19th, 1999. The court has an
25 independent obligation to consider whatever information

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1 is before it regardless of standing.

2 MS. CAPURRO: We're not disputing that. That's
3 not the argument.

4 SPECIAL MASTER: I think I understand the
5 argument.

6 MR. COOPER: You have briefing on all of this,
7 Your Honor.

8 SPECIAL MASTER: I do. I do.

9 MR. SCARBOROUGH: Your Honor, if we're down to
10 sort of parting remarks here, I just want to say from
11 the defendants' perspective, you know, we have put a
12 tremendous pot of money into escrow. As I think lead
13 counsel pointed out may be the second largest indirect
14 purchaser settlement ever. So a tremendous amount of
15 money that they have already paid, it's already sitting
16 in escrow and has been for some time.

17 That money was put there to buy global peace
18 for this litigation for IPP claims with the same factual
19 predicate. So that's what we want. That's what LG
20 already got. They already paid a considerably smaller
21 amount of money for the exact same release that we are
22 asking for here. So what we would like to see is at
23 least to get past that first threshold, that the money
24 that was paid, this extraordinarily large amount of
25 money that was paid is sufficient for the global

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1 release.

2 Just in the same way that the issues with the
3 LG settlement, none of these objections were raised
4 during the final approval of that settlement, the final
5 judgment entered there. It's understandable that there
6 could be some quibbles with allocation. What's going to
7 happen with that LG money? And that's fine, and that
8 can apply more broadly to the settlements that are now
9 before Your Honor for final approval.

10 As a general principle, I don't think
11 defendants have a problem if we tweak the allocation
12 plan. If notice is perhaps sent out again, as long as
13 it's done in a responsible, comprehensive fashion that's
14 really going to lead to final approval, I don't think we
15 have a problem with some of that being done. But we
16 want our deal, which we think is fundamentally sound,
17 approved now. And it's time to do that.

18 SPECIAL MASTER: Okay. I would like to just
19 take a minute and talk to Ms. Cohen. Give us two
20 minutes and we'll be right back.

21 (Recess 1:03 p.m. to 1:07 p.m.)

22 SPECIAL MASTER: Okay. Let me ask -- I'm not
23 sure whom -- a question. Mr. Alioto, I guess, you
24 talked about dealing with the Illinois and Washington
25 issues by sort of carving out of your pro rata scheme a

1 separate allocation scheme for them.

2 THE WITNESS: Yes.

3 SPECIAL MASTER: Correct?

4 MR. ALIOTO: Yes.

5 SPECIAL MASTER: Could the same kind of
6 arrangement be made to accommodate the -- the Chunghwa
7 settlement if -- if there are disparities between the
8 distribution scheme that was approved by the court in
9 Chunghwa and your distribution scheme? I mean it sort
10 of as a practical matter, you only have \$10 million.

11 What's the practical usefulness of giving notice to all
12 the resellers saying oh, you can now submit claims?

13 I mean I'm trying to find a solution to this
14 Chunghwa problem if it turns out there is one.

15 MR. ALIOTO: Well, certainly to -- to the
16 extent that they were given notice that they weren't
17 going to get anything, and if it turns out that in fact
18 they're not going to be getting anything, that's
19 consistent. And -- and do you have to send another
20 notice to them? I don't think so.

21 But the big question is is there some
22 unfairness there, and is there some inconsistencies, the
23 objector says. I would like to address that first and
24 be absolutely certain. You know, that settlement was
25 many, many years ago, and I don't have the judgment

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1 memorized, but I'm going to certainly be looking at it.

2 I think maybe the better course there, Your
3 Honor, would be to let us review some of these points
4 that they made and try and identify the problem and then
5 respond to you with this next round of briefing.

6 SPECIAL MASTER: We're not -- we're not talking
7 rounds of briefing here. I mean --

8 MR. COOPER: What next round of briefing?

9 MR. ALIOTO: Well, with this next submission, I
10 suspect, is probably a better choice of words.

11 MR. COOPER: What next submission? I thought
12 we went through this. There are no next submissions.

13 SPECIAL MASTER: Well, I'm concerned that I do
14 not have the full picture on Chunghwa, and I'm not about
15 to issue a report and recommendation on something I
16 don't feel comfortable that I have the full picture
17 about.

18 MR. COOPER: Well, I did offer, Your Honor, to
19 send you the documents in consultation with Mr. Alioto
20 what documents you should see.

21 SPECIAL MASTER: Yes.

22 MR. COOPER: I'm not certain if that helps you
23 or solves the issues, or if you want them to go together
24 with some five-page letter or something not to exceed
25 five pages. I'm sure we can do that relatively quickly.

1 But when I hear discussions of future rounds of
2 briefings, I mean that's why I asked the question
3 before. I though it was confusing.

4 SPECIAL MASTER: Well, I mean, I guess if
5 this -- if I'm going to hew to the court's schedule,
6 then I'm going to need by Thursday some material, and
7 I'll finish with Chunghwa -- just some other material.
8 I'm going to need -- somebody mentioned cases regarding
9 treble -- I'm going to need any cases that you want us
10 to look at that you -- I didn't give you a chance to
11 give me the citations of today -- the docket numbers for
12 the four complaints in this case so we can easily find
13 them and look at what was alleged or not alleged.

14 We're having a handwriting problem.

15 Oh, Ms. Kirkham was going to give me an
16 additional cite to the -- a reference that she made to
17 the Renfrew's report and recommendation.

18 And then information about -- I'd like -- I'd
19 like Mr. Fisher to provide an additional declaration
20 with the updated status of the claim process in as much
21 specificity as he, you know, reasonably and
22 professionally can.

23 And finally we get to Chunghwa, and I -- we
24 definitely need copies of all the relevant documents
25 that allow us to see what was settled and what was

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1 ordered there. The question is whether we also need
2 briefing, and I'd like to say no, but I think -- I think
3 -- I think I do. I mean, I think I need something like
4 a three to five pages from the Cooper group explaining
5 why this is a problem and hopefully maybe suggesting
6 what to do about it, and a brief from Mr. Alioto. Now,
7 I think what we should do is maybe have those
8 simultaneous briefs.

9 Can we get those in by Friday?

10 MR. COOPER: That's fine, Your Honor. We will
11 send to Mr. Alioto today the list of documents that we
12 think we need to send you copies of starting with the
13 settlement agreement. Whatever is relevant regarding
14 preliminary approval, final approval and judgments, and
15 we can agree on what documents you should be looking at.
16 And a brief not to exceed five pages -- simultaneous
17 briefs not to exceed five pages by Friday?

18 SPECIAL MASTER: Yes. Can we -- Ms. Cohen is
19 asking for noon on Friday.

20 MR. COOPER: Sure. How about Thursday?

21 MS. COHEN: I would love it.

22 SPECIAL MASTER: Thursday would be great.
23 You've got a lot -- I mean, particularly Mr. Alioto has
24 more on his plate than you do. We're really under the
25 gun here, so Thursday would be very helpful.

1 MR. COOPER: I'm sure we can do it. That's
2 three days.

3 SPECIAL MASTER: But Friday at noon for sure.

4 MR. ALIOTO: Friday at noon.

5 SPECIAL MASTER: Mr. Bonsignore.

6 MR. BONSIGNORE: Yes, I mentioned that I have
7 objective evidence that some of the critical and
8 decisive points that Mr. Alioto raised were not true.

9 SPECIAL MASTER: You wanted to augment the
10 record, as I recall.

11 MR. BONSIGNORE: Yes, I have emails to him
12 providing information regarding the Massachusetts and
13 the testimony.

14 SPECIAL MASTER: You're going to have to file a
15 motion to augment the record.

16 MR. BONSIGNORE: Okay. I'm just wondering
17 why --

18 SPECIAL MASTER: I'm not going to give you
19 leave to do that here.

20 MR. BONSIGNORE: Okay. I'm just wondering why
21 that's treated differently than the other evidence that
22 you said would complete your picture? What we have is
23 a --

24 SPECIAL MASTER: Because I think that's fair
25 and just, and I have constraints, the date on which I

1 have to get my report and recommendation in.

2 MR. BONSIGNORE: I can provide the emails
3 today.

4 SPECIAL MASTER: You may do so. You may file
5 the motion today and I'll consider it.

6 Mr. Goldberg.

7 MR. GOLDBERG: Joseph Goldberg for the IPP. I
8 don't want to file anything.

9 Before the very first break when you asked a
10 question, and I just want to make sure that the record
11 is clear as to the answer. You asked about what were
12 the pending claims in the operative, which I believe is
13 the fourth amended complaint. And I just want to make
14 sure that as I understand it, the record is clear, and
15 you're going to get the docket cites for all of these
16 and you're going to look at it, and I think I'm
17 accurately reporting.

18 In the operative complaint, the fourth amended
19 complaint, any pending -- any pending damages claimed is
20 limited to the 22 class jurisdictions. That is the 21
21 states and the District of Columbia. There is no
22 pending damages claim in the operative complaint beyond
23 those 22 jurisdictions. I believe when you review the
24 complaint, you'll see that's correct. I think that's
25 what you were asking, and I just want to make sure that

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1 the record is clear as to what the answer is. Thank
2 you.

3 SPECIAL MASTER: All right. Thank you,
4 everybody. This was not the two hours I hoped for, but
5 it was three hours and 15 minutes, and you're to be
6 congratulated for that.

7 Mr. Cooper.

8 MR. COOPER: I'm confused about whether the
9 simultaneous admissions about Chunghwa is to be Thursday
10 at 5 o'clock or Friday at noon.

11 MR. GOLDBERG: Yours is Thursday and his is
12 Friday.

13 MR. ALIOTO: I need time. I need a little
14 time.

15 SPECIAL MASTER: Friday -- Friday noon.

16 MR. COOPER: Okay.

17 SPECIAL MASTER: Friday noon. If you get it by
18 Thursday, you get a gold star.

19 MR. COOPER: But they can't be simultaneous.

20 SPECIAL MASTER: All right. We're off the
21 record. Thank you very much.

22 (TIME NOTED: 1:17 p.m.)

23

24

25

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1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby certify:

3 That the foregoing proceedings were taken
4 before me at the time and place herein set forth; that
5 any witnesses in the foregoing proceedings, prior to
6 testifying, were duly sworn; that a record of the
7 proceedings was made by me using machine shorthand which
8 was thereafter transcribed under my direction; that the
9 foregoing transcript is a true record of the testimony
10 given.

11 Further, that if the foregoing pertains to the
12 original transcript of a deposition in a Federal Case,
13 before completion of the proceedings, review of the
14 transcript [] was [] was not requested.

15 I further, certify I am neither financially
16 interested in the action nor a relative or employee of
17 any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date subscribed
19 my name.

20 Dated: 1/10/16.

21 Suzanne F. Boschetti
22

23 Suzanne F. BOSCHETTI
24
25

CSR No. 5111

[& - 764-8700]

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EXHIBIT 2

Sandra Chan

From: MARTIN QUINN <mq1942@me.com>
Sent: Thursday, December 31, 2015 12:41 PM
To: Mario Alioto
Cc: Francis Scarpulla; Sandra Chan; Emilio Varanini; Marlo Cohen
Subject: Re: CRT/Hearing on January 5, 2016

Dear Counsel: I have Mr. Scarpulla's letter e-filed with JAMS and Mr. Alioto's e-mail asking about procedure for the January 5 hearing. Mr. Scarpulla's letter also asks for the production of material prior to the hearing relating to expenses and fee calculations. I will issue an order on Mr. Scarpulla's requests, but wanted to let you know now my preferences.

First as to the hearing, it matters not to me how many firms want to participate in person or by telephone. However, I envision the hearing lasting about 2 hours max, so I would like some coordination among counsel as to who takes the lead in speaking. I really don't need to hear the same arguments from 5 different lawyers. There will be no formal examination or cross-examination. This is an opportunity for reasoned legal argument. I would like to hear first from whatever counsel are speaking for the objectors, basically responding to the points made in Lead Counsel's Reply Brief.

The principal issues that concern me are the objections raised on the basis that all the national class is not receiving compensation, the viability of an indirect purchaser claim in a non-repealer state, the reasons for not having representatives from the three repealer states, the propriety of the notice. I am far less interested in hearing argument about attorney fees and expenses, not because those issues aren't significant, but because I can make reasoned judgments on those issues without more argument. That doesn't mean I won't hear anything on those issues — just keep it to a minimum.

As to Mr. Scarpulla's requests for production, I am not going to grant them. None of the material he asks for seems to me necessary for me to make a reasoned decision on the request for total fees. They may become more relevant to the allocation phase, but I have quite enough material now to rely on for this phase. I believe Mr. Alioto is having his accountants perform a more detailed audit of the expense requests, and I will want to see the results of that early next week.

Martin Quinn
Special Master

MARTIN QUINN
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mq1942@me.com

On Dec 31, 2015, at 1:20 PM, Mario Alioto <MAlioto@TATP.com> wrote:

EXHIBIT 3

CRT: Production of billing records

MARTIN QUINN [mq1942@me.com]

Sent: Thursday, January 07, 2016 4:13 PM

To: Lauren Capurro (Russell) [LaurenRussell@tatp.com]

Cc: Mario Alioto [MAlioto@TATP.com]; Sandra Chan; Marlo Cohen [marlojams@yahoo.com]

Ms. Capurro... as if you didn't have enough to do, I have a further request. On November 28, 2015, I ordered that copies of all billing records of class counsel be produced to me. I now consider that unnecessarily burdensome for Lead Counsel and for me, and unnecessary for me to perform an adequate check of the reliability of those records. You have already provided me with the 2014-2015 billing records of Trump, Alioto; Fine Kaplan; Freedman Boyd; and Hulett Harper. I would like you to provide me in a similarly convenient Dropbox format, if possible, copies of the billing records for any two months per year for 2012, 2013 and 2014 for the following seven randomly selected firms: Lovell, Green & Noblin, Miller Law, Sherman Kassof, Sharp McQueen, Frankovitch, Wyatt & Blake. I have chosen a mix of firms with large, medium and small lodestars. That is a total of 42 months of class counsel billing records, which I consider a representative sample.

Please let me know if this is feasible, whether you have any questions, whether a change in my format would make production quicker and easier, and when you can get this material to me.

Thank you as always for your good cooperation.

Martin Quinn
Special Master

TO BE POSTED ON CASE ANYWHERE

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San Francisco, CA 94111
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EXHIBIT 4

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*Lead Counsel for the
Indirect Purchaser Plaintiffs*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SAN FRANCISCO DIVISION

**IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION**

) Master File No. CV-07-5944 JST
)
)
) MDL No. 1917
)
)
) DECLARATION OF JOSEPH M. FISHER
) REPORTING ON CLAIM SUBMISSIONS
)
)
)
)
)
)

This document relates to:)
)
)
ALL INDIRECT PURCHASER ACTIONS)
)
)
)
)

1 I, Joseph M. Fisher, declare:

2 1. I am the president of The Notice Company, Inc., a Massachusetts corporation with
3 offices at 94 Station Street, Hingham, MA 02043 (“The Notice Company”). The Notice
4 Company is principally engaged in the administration of class action settlements and lawsuits
5 pending in courts around the United States, including the dissemination of notice to class
6 members, administering the claims process, and distributing the proceeds of the litigation to the
7 class. I have over a decade of experience assisting attorneys with class action notices and claims
8 administration. I am also a member in good standing of the bars of the Commonwealth of
9 Massachusetts, the District of Columbia, and the Commonwealth of Virginia. I am over 21 years
10 of age and not a party to this action. The Notice Company is the Claims Administrator,
11 responsible for receiving and processing claims in these Settlements. I have personal knowledge
12 of the facts set forth herein and, if called as a witness, could and would testify thereto under oath.

13 2. Class Counsel has asked me to provide a report on claims received to date.

14 3. The information provided in this Declaration will be subject to change based on
15 (a) ongoing claims processing and auditing being performed by The Notice Company; (b) Court
16 rulings on pending matters such as Class Counsel’s request for attorneys’ fees and litigation
17 expenses; and (c) interest and future expenses relating to claims administration and taxes.

18 4. The deadline to submit claims in these settlements was December 7, 2015. The
19 Notice Company received 109,709 timely claims submissions. As of the date hereof, The Notice
20 Company has:

21 a. processed 107,499 claims;

22 b. calculated that for the 107,499 processed claims, the total number of CRT units
23 claimed was 19,933,103;

24 c. applied the weighting formula reflected in the Detailed Notice (where a weight of
25 1 is applied to a standard CRT TV , a weight of 4.3 is applied to a large CRT TV,
26 and a weight of 3 is applied to a computer CRT monitor) to calculate that the
27 number of “CRT Equivalent” units claimed was 58,955,056; and

1 d. calculated that the number of claims submitted that were incomplete was 1,733.

2 5. As of the date hereof, The Notice Company has received 1,060 claims that were
3 submitted after the deadline of December 7, 2015.

4 6. The Notice Company has not yet prepared tables categorizing claims by number
5 of CRT products purchased by each claimant or the total number of CRT products purchased by
6 claimants, by quantity and type of CRT product. The Notice Company could provide this
7 information if requested to do so.

8 7. In order to estimate aggregate payments to claimants under the plan of
9 distribution, I would need to know two figures: (1) the amount available for distribution, and (2)
10 the quantity of CRT products purchased by claimants, based on the weighting formula set out in
11 paragraph 4.c. above.

12 8. Neither of the figures referenced in paragraph 7 above can be estimated with
13 precision at this time. The amount available for distribution is dependent upon the amount
14 awarded for attorneys' fees, expenses, and incentive awards. It will also be dependent on further
15 expenses incurred in claim administration and the distribution of funds to claimants. Taxes,
16 accounting, other professional services, and interest on the settlement funds and other items will
17 also affect the amount available for distribution.

18 9. For the purpose of developing an estimate in this Declaration, and subject to the
19 reservations set forth herein, I estimate that the following amount would be available for
20 distribution:

\$576,750,000	Total Settlements
\$191,866,667	Requested attorneys' fees and incentive awards
\$7,660,000	Requested litigation expenses
\$5,400,000	Approximate cost of notice programs and estimated cost of claims administration
\$548,000	Payments to Illinois and Oregon Attorneys General
\$371,275,333	Estimated amount available for distribution.

1 10. The Notice Company's calculation of the quantity of CRT products purchased by
2 claimants is also subject to change. The auditing of claims and the finalizing of incomplete
3 claims will affect the total quantity of claims. So too would the possible inclusion of late claims,
4 as well as claims that might be generated by any notice to be given by the California Attorney
5 General in her separate lawsuit.

6 11. For purposes of presenting an estimate in this Declaration, subject to the
7 reservations set forth herein, and without factoring in the payment of an expected minimum
8 amount to claimants, below is an estimate of the estimated payout amounts to claimants:

9	\$371,275,333	Estimated amount available for distribution (¶ 9 above)
10		
11	58,955,056	Weighted number of CRT products purchased by claimants (¶ 4.c. above)
12		
13	\$6.30	Estimated payment per Standard CRT Television
14		
15	\$27.09	Estimated payment per Large CRT Television
16		
17	\$18.90	Estimated payment per CRT Computer Monitor

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed at Hingham, Massachusetts, this 15th day of January, 2016.



JOSEPH M. FISHER